Agreement Between Owner and Consultant for Complete (100%) Design and Engineering Services for the Assabet River Rail Trail (Acton & Maynard)

AGREEMENT made as of _____, 2013

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"):

_____
_____
_____

For the following Project:

Preparation of 100% Design Plan for the Assabet River Rail Trail (ARRT) –
Acton: From the MBTA Commuter Rail Station in South Acton south to the Maynard town line adjacent to Route 27; and
Maynard: From the aforesaid location at the Acton town line southwesterly through downtown Maynard to the Stow town line at White Pond Road.
Consistent with MassDOT Agreement No. _____, dated _____, including Exhibits A through ___ thereto. The MassDOT Agreement is incorporated herein by reference, expressly made part of this Agreement, and attached hereto as Exhibit A.

The Owner and Consultant agree as set forth below.

CONTEXT AND BACKGROUND

A. PRELIMINARY (25%) DESIGN

25% design services, including a public hearing held on June 13, 2013, for the Acton & Maynard section of the ARRT were provided by a third party consultant under a prior agreement between the Town of Acton and the third party consultant. Plans and documents generated from this effort are in the possession of the Town of Acton and/or MassDOT. MassDOT has provided review comments to these documents. In addition, members of the public provided comments in connection with the June 2013 hearing. The Consultant agrees to address and resolve all these review comments to the satisfaction of the Owner as part of the Basic Services under this Agreement.

B. FUNDING AND FUNDING LIMITS

75% of funding for the ARRT design services is derived from a 2005 Federal Earmark (HPP 1761) originally in the amount of $1.5 million. The remaining balance in the earmark after federal rescissions and after past and anticipated payments made for services by others is between $900,000 and $950,000. 25% of the funding must be a local match by the communities of Acton and Maynard. The total compensation under this Agreement as set forth in Article 11 is for all Services enumerated in this Agreement, including all Services listed in **Exhibit A**.

C. INTER-MUNICIPAL AGREEMENT

The Towns of Acton, Maynard, Stow and Hudson, and the City of Marlborough have executed an Inter-Municipal Agreement to facilitate the creation of the Assabet River Rail Trail. Under the Inter-Municipal Agreement the Owner is designated the "Lead Community" for all grant application, grant funding contracts, and design consultant contracts related to the Project. The Project extends through the towns of Acton and Maynard. Accordingly, the Owner under this Agreement represents its own interests as well as the interests of the Town of Maynard. The Consultant acknowledges and agrees that the Owner cannot agree to any additional services under this Agreement, changes in the scope of services, or other changes to this Agreement without the approval of the Town of Maynard, which approval may or may not be obtained by the Owner.

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 consistent with the Consultant's standard of care set forth at 1.1.3.

1.1.3 The Consultant shall perform the Services under this Agreement in accordance with the 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 standards set forth in this Subparagraph 1.1.3.

1.1.4 The Consultant shall staff the Project with qualified personnel 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 Agreement by the Consultant. Any additional personnel who have key management or technical

responsibilities (as determined by the Owner) shall be subject to the Owner's prior written approval, and upon such approval shall become Key Personnel. The Consultant shall not remove, replace or substitute Key Personnel without the Owner's prior written approval which approval shall not be unreasonably withheld. In the event one or more of the Key Personnel dies, becomes disabled, terminates his/her employment, or is terminated by the Consultant or its Consultant for cause, the Consultant shall cause such individual(s) to be replaced with individuals approved in writing by the Owner. The Owner may require the Consultant to relieve any of the Key Personnel from any further work under the contract if the Owner in its sole discretion finds that such Key Personnel individual or Consultant does not perform at an acceptable skill level, does not deliver work which conforms to the performance standards stated in this Agreement, or conflicts with Owner personnel and hinders effective and efficient progress on the work of the Project or the assignment for which the member of the Key Personnel is responsible. Nothing herein to the contrary shall relieve the Consultant of its obligation to provide its Services in accordance with Subparagraphs 1.1.2 and 1.1.3.

1.1.5 Consistent with the standard of care set forth in Subparagraph 1.1.3, all drawings, specifications and other documents prepared by the Consultant 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. The Consultant shall not during site visits or as a result of its observations of the progress of construction supervise, direct or have control over the construction contractor's work. The Consultant expressly disclaims any responsibility for general site safety and shall be responsible for the safety of its own employees and the employees of its subconsultants.

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, which approval shall not be unreasonably withheld, 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. The Owner further acknowledges that the Consultant is not responsible for the design or review of the construction contractor's safety practices or the means and methods of construction.

2.1.5 Notwithstanding any other provisions of this Agreement, only the Basic Services and the General Activities related thereto as itemized in section 2.2.1 are authorized as of the date of this Agreement. All subsequent services are not part of the Basic Services as of the date of this Agreement. The Consultant is not authorized to perform services unless and until specifically authorized in writing by the Owner. The Owner has not appropriated or otherwise obtained funds for additional services. Accordingly, the Owner has no obligation to compensate the Consultant for the performance of any additional services. However, the Owner may at its sole option, and subject to applicable law, request the Consultant to perform other services in connection with some or all of the phases and elements in this design project with the Consultant's consent and for additional compensation as Additional Services pursuant to Article 3. The Owner may also elect to engage other designers to perform such additional services, or may elect not to proceed with the Project. If the Owner does not elect to request the Consultant to perform additional services, this Agreement shall terminate upon the completion of the Basic Services as set forth herein.

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 COMPLETE (100%) DESIGN AND ENGINEERING SERVICES

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 Based on the approved program, and the Project Schedule the Consultant shall prepare, for approval by the Owner, Design Documents, developed in stages to the one hundred percent (100%) level of complete design development consistent with the applicable procedures and standards of the Mass Highway 2006 Project Development and Design Guide, inclusive of drawings prepared on a CADD system and other documents illustrating the complete design. The Consultant shall prepare such studies or other materials as are necessary to establish the design of the Project.

2.2.4 The Owner has provided to the Consultant, and the Consultant has in its possession, certain information concerning existing conditions at the site and preliminary (25%) design plans, including the documents and information listed on **Exhibit G**. The Consultant shall review all such information, verify, in general, the accuracy of such information, and notify the Owner of any inconsistencies or discrepancies observed by the Consultant.

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, prospective supplemental 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.

3.1.3 Approval by the Owner of Additional Services for Project items and locations not in the Town of Acton are subject to the approval and funding of such Additional Services by the Towns of Carlisle, and Westford respectively under the terms of the Inter-Municipal Agreement. This paragraph shall not be deemed to prevent the said towns from entering separate agreements with the Consultant for Additional Services pertaining to the Project within their respective borders.

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, Planning Director.

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 4.3 shall be furnished at the Owner's expense, and provided the Consultant complies with its obligations under Subparagraphs 2.1.4 and 2.2.4 the Consultant shall be entitled to rely thereon.

ARTICLE 5

CONSTRUCTION COST

5.1 DEFINITION

5.1.1 "Final Construction Cost" shall mean the firm and best estimate of the total project construction cost to the Owner, and the towns that the Owner represents in this agreement, in conformance with MassDOT cost estimating standards for all elements of the Project designed or specified by the Consultant and its Consultants.

5.1.2 The Final Construction Cost shall include the cost of labor and materials at market rates current at the time of completion of all work under this agreement, plus a reasonable allowance for a contractor's overhead and profit.

5.1.3 The Final Construction Cost shall be broken down by town, so that there is subtotal shown for each of Acton and Maynard.

5.1.4 The Final Construction Cost shall include a schedule for estimated cost escalation for each year that construction start is delayed, up to 5 years.

5.1.5 The Final Construction Cost does not include the compensation of the Consultant and the Consultant's Consultants under this agreement, the costs of the land, rights-of-way, financing or other costs.

5.1.6 The Final Construction Cost does not include the compensation of a Consultant to perform Project construction engineering, change order, and oversight services on behalf of the Owner. Such services are included under this Agreement.

5.2 RESPONSIBILITY FOR DEVELOPMENT OF FINAL CONSTRUCTION COST

5.2.1 The Consultant's estimates of Final 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 Final 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.

6.3 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.

6.4 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 fullest extent permitted by law, shall indemnify and hold harmless the Consultant from any claim, liability or cost, including attorneys fees, arising out of any such use or reuse of, or changes to, the Instruments of Service by Owner, or Owner's contractors, representatives and agents, as described in this Paragraph 6.4.

ARTICLE 7

DISPUTE RESOLUTION

7.1 Unless otherwise agreed, the Consultant and its 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 to the extent not due in whole or part to the fault of the Owner, the Town of Maynard, MassDOT, or any of their respective other consultants, and such failure is not cured within fourteen (14) days after receipt of such notice except as is otherwise expressly set forth herein including at Article 12 of this Agreement. Any termination of this Agreement hereunder shall not affect or impair the right of the Owner to recover damages occasioned by any default of the Consultant, to the extent not due to the fault of the Owner, the Town of Maynard, MassDOT or their respective other consultants, in whole or part, 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 and expenses necessarily and reasonably incurred in order to suspend its services. 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 or for convenience, 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 subject to the restrictions on use and re-use of

Instruments of Service set forth in Article 6 "Use of Consultant's Drawings, Specifications, and Documents".

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 result from the misconduct, breach or negligence (including without limitation negligent professional acts, errors or omissions) of the Consultant or its subconsultants 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 subconsultant agrees to indemnify the Consultant and the Owner. To the extent permitted by law, the Owner agrees to indemnify and hold harmless the Consultant and its subconsultants and their respective affiliates or related entities and/or their, members, directors, officers and employees from and against all claims, causes of action, suits, demands, losses, damages, liabilities and expenses (including reasonable attorneys' fees), claims or disputes resulting from the misconduct, breach, negligent errors or omissions, or wrongful act of the Owner's Consultant's or subconsultants of any tier, to the extent that such claims, causes of action, suits, demands, losses, damages, liabilities and expenses (including reasonable attorneys' fees), claims or disputes result, arise from, or directly relate to the Consultant or its subconsultants Services under this Agreement.

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 including all Exhibits thereto 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:

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

and if to the Consultant, to:

_____
_____
_____
_____
_____
_____

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. Neither Owner nor Consultant or any affiliate or related entity of either shall ever be liable to the other for indirect, special, incidental or consequential damages, or for damages or loss from causes beyond their respective reasonable control arising from or related to this Agreement.

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 in a manner consistent with Consultant's standard of care set forth in paragraph 1.1.3, so as to comply with all applicable federal, State and municipal laws, regulations, codes, and ordinances, including 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 10.6.1, 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. Further, refer to Paragraph 11.3.2 regarding rules for payment for reimbursable expenses incurred on behalf of a town other than the Owner.

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

10.1.1.2 Expense of renderings, models, photography and mock-ups requested by the Owner (design work in connection with mock-ups or models is part of the Consultant's Basic Services; only the costs of producing models or mock-ups are Reimbursable Expenses).

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

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

10.2 PAYMENTS ON ACCOUNT OF SERVICES

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

10.2.2 The Consultant shall submit to the Owner a monthly request for payment, in form and substance satisfactory to the Owner, and follow the requirements of invoicing in MassDOT Agreement 64287. 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 itemize billing separately for work completed with respect to the Project in Acton, Carlisle, and 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 Owner 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 100% design by 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 which default remains uncured;

2. The portion of any such payment which is attributable to services which are not performed substantially in accordance with this Agreement; provided, however, that payment shall be made as to the part thereof attributable to services which were performed substantially 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 or final 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 of Consultant's subconsultants whose work was included in the Services for which payment was made by the Owner, except for good cause. The Consultant shall promptly pay all bills for labor and materials performed and furnished by others in connection with the performance of services except for good cause.

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 _____ Dollars ($ _____), payable on a monthly basis for actual services performed. The Consultant's invoices and payments by the Owner shall be only for tasks or sub-tasks as shown in Exhibit A and completed to the satisfaction of the Owner.

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) direct personnel expense multiplied by a factor of 3, or (iii) 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 Owner shall be responsible to pay for Owner approved Additional Services pertaining to the Project in Acton. Payments by the Owner for Additional Services pertaining to the Project in Maynard are subject to the approval and funding of the Additional Services by the Town of Maynard and receipt of payment for the Additional Services by the Owner from Maynard under the terms of the Inter-Municipal Agreement. All amounts for Additional Services shall be allocated accordingly on the Consultant's invoices. Additional Services pertaining to the Project provided under separate agreements with any one of the said other towns shall be invoiced directly to the other town.

11.3 **REIMBURSABLE EXPENSES**

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

11.3.2 The Owner shall be responsible to pay for Reimbursable Expenses pertaining to the Project in Acton. Payments by the Owner for Reimbursable Expenses pertaining to the Project in Maynard are subject to the approval and funding of the Reimbursable Expenses by the Town of Maynard under the terms of the Inter-Municipal Agreement. All Reimbursable Expenses shall be allocated accordingly on the Consultant's invoices. Reimbursable Expenses pertaining to the Project provided under separate agreements with any one of the said other towns shall be invoiced directly to the other town.

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 $500,000, 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 The Consultant agrees to adhere to the time requirements and schedules included in this Agreement (**Exhibit E**); to perform its services as expeditiously as is consistent with the standard of professional skill and care required hereby, being the same care and skill ordinarily exercised by responsible members of the Consultant's profession currently practicing in the Commonwealth; 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 except as otherwise expressly set forth herein. 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**, the Consultant shall be liable to the Owner in the amount of $500 per day for each day that the Consultant is late in meeting any such Target Completion Date and Timeline up to not more than 5% of the Basic Compensation. The Owner and the Consultant agree that amendments to the time requirements and schedules of this agreement may become necessary as a result of MassDOT guidance, direction, or other actions; in such instances no liquidated damages shall be due to the Owner. In addition, the Consultant may request in writing from the Owner an extension of the Target Completion Date and Timeline for reasons wholly or partially beyond the Consultant's control, and the Owner shall not unreasonably deny such request. No liquidated damages shall be due to the Owner during such time that the Target Completion Date and Timeline have been extended by the Owner.

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 12.5, and it shall be a term of each contract with a consultant or supplier in connection with the performance of the Services under this Agreement that the consultant or supplier shall be bound to non-discrimination and equal opportunity requirements equivalent to the obligations of the Consultant hereunder.

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

12.5.4 The Consultant's non-compliance with any provision of this Paragraph 12.5 shall constitute a material breach of this Agreement, for which the Owner may, in its discretion, upon failure to cure said breach within thirty (30) days after written notice thereof, terminate this Agreement upon ten (10) days written notice. The Consultant shall indemnify and hold harmless the Owner from any claims and demands of third parties resulting from the Consultant's non-compliance with any of the provisions of this Paragraph 12.5 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 MassDOT Agreement No. _____ with Standardized Scope of Services and Work Hour Estimate Forms for Consultant Services and Exhibits A through __.

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)

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

TOWN OF ACTON

By: _____
Steven L. Ledoux, Town Manager

(Consultant Name)

By: _____
_____

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EXHIBIT A

MassDOT Agreement No. _____ with Standardized Scope of Services and Work Hour Estimate Forms for Consultant Services and Exhibits A through __.

EXHIBIT B

CONSULTANT'S CONSULTANTS AND OWNER'S CONSULTANTS

Approved Consultant's Consultants

Owner's Consultants

None

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)