

Agreement Between Owner and Consultant for the Kelley's Corner Improvement Initiative

AGREEMENT made as of January 15, 2014

BETWEEN the Owner:

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

and the Kelley's Corner Improvement Initiative Consultant (hereafter referred to as the "Consultant"):

The Cecil Group, Inc.
241 A Street, Suite 500
Boston, Massachusetts 02210

For the following Project:

Town of Acton
Kelley's Corner Improvement Initiative – Town Center Planning:
Public Infrastructure Improvement Plan
Zoning and Design Plan
Robust Public Participation Process

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 subconsultants ("Subconsultants") 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 and agreed to by the Consultant (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 Subconsultants 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 professional standards of skill, being the same care and skill ordinarily exercised by responsible members of the Consultant's profession currently practicing in the Commonwealth on projects of comparable scope and complexity. The Consultant shall be responsible for all Services performed by its Subconsultants. The Subconsultants 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 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. In the event one or more of the Key Personnel dies, becomes disabled, terminates his/her employment, or is terminated by the Consultant or its Consultant for cause, the Consultant shall cause such individual(s) to be replaced with individuals approved in writing by the Owner. The Owner may require the Consultant to relieve any of the Key Personnel from any further work under the contract if the Owner in its sole discretion finds that such Key Personnel individual or Consultant does not perform at the applicable skill level, as described in the RFP and the Consultant's proposal, does not deliver work which conforms to the performance standards stated in this Agreement and the Consultant's proposal, or conflicts with Owner personnel and hinders effective and efficient progress on the work of the Project or the assignment for which the member of the Key Personnel is responsible. Nothing herein to the contrary shall relieve the Consultant of its obligation to provide its Services in accordance with Subparagraphs 1.1.2 and 1.1.3.

1.1.5 Consistent with the standard of care set forth in Subparagraph 1.1.3, all communications, papers, reports, and other documents prepared by the Consultant or its Subconsultants and all Services performed by the Consultant or its Consultants under this Agreement shall comply with all applicable federal, state and local laws, ordinances, codes, rules, and regulations as they may be amended during the period of Services, 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 11, 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, together with the Project Manager designated in **Exhibit C** shall perform at least thirty-five percent (35%) of all work under the

Agreement, measured either by value of services rendered, or by time spent on such services. Not included in this are orders for general and custom made materials, supplies, etc. in support of the project. The identity and scope of work of each Subconsultant 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 Subconsultants specifically identified on **Exhibit B**. The Consultant shall, as part of its Basic Services, provide the services of the Subconsultants listed on **Exhibit B** as being retained by the Consultant, whether or not the Subconsultant is identified by name (except for any Subconsultants listed on **Exhibit B** that are expressly indicated as being retained by the Consultant as an Additional Service) and such other Subconsultants as may be required to meet the Consultant's obligations to perform Basic Services under this Agreement, provided that each such additional Subconsultant 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 Subconsultants 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 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 or additional services are not part of the Basic Services as of the date of this Agreement. The Consultant is not authorized to perform additional services unless and until specifically authorized in writing by the Owner. The Owner has not appropriated 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 in this design project. 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 SCOPE AND PLAN OF SERVICES

2.2.1 The Consultant shall perform the planning, analysis, design, survey, and engineering 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 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 the Project, consistent with the Scope and Plan of Services.

2.2.4 Based on the approved program and the Project Schedule, the Consultant shall prepare for approval by the Owner, draft and final documents, developed in stages throughout the Project phases. The Consultant shall prepare such studies or other materials as are necessary to prepare such documents and to deliver all products as listed and defined in **Exhibit A**.

2.2.5 The Owner has provided to the Consultant certain background information concerning previous plans and studies and other information about Acton, including the documents and information listed on **Exhibit F**. The Owner does not guaranty the accuracy of information furnished. 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 Project to conduct additional investigation or provide additional information, the Consultant shall so notify the Owner, specifically identifying the additional investigation or information deemed necessary by the Consultant. The Owner shall provide such additional investigation or information as is reasonably requested by the Consultant and available to the Owner, or the Owner may opt to produce such information at the Owner's expense, or, at the Owner's option and the Owner's prior written authorization, the Consultant shall engage appropriate consultants to provide such additional

investigation or information, and the Owner shall reimburse the Consultant for the costs of such investigations or information as an Additional Service.

2.3 OTHER BASIC SERVICES

2.3.1 The Consultant shall, at the request of the Owner, attend meetings with Boards, Commissions, Committees of the Town, with the Town's residents, and such other persons as the Owner may require, and the Consultant shall prepare required agendas, programs, documents, and presentation for such meetings, in accordance with the Scope and Plan of Services.

2.3.2 The Consultant shall maintain Project records in an orderly manner according to filing systems, including records of the Project correspondence, Project meeting minutes, product data and samples, supplementary papers and documents, and such other schedules, reports and other documents as are prepared or received by the Consultant and its Subconsultants in connection with the Project. The Owner and its representatives shall have the right to examine such Project records after filing written notice requesting the records, 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 10. 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 changes to the final documents and reports, 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 Subconsultants.

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 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 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 not included in Basic Services.

3.2.6 Providing services relative to future programs or 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, and 3.2.1 through 3.2.7. 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 Subconsultants 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 2.2.5 the Consultant shall be entitled to rely thereon.

ARTICLE 5

USE OF CONSULTANT'S, DRAWINGS, SPECIFICATIONS AND DOCUMENTS

5.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Consultant and its Subconsultants 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 5, 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 originals and 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 the further design and construction, within the Project area subject to the provisions of this Article 5. The Consultant shall be responsible for obtaining from the Subconsultants all license agreements necessary in order for the Consultant to grant the License to the Owner. The License shall be effective upon completion of the services and payment in full of all monies due to the Consultant. 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 Paragraph 5.1 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.

5.2 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 provide to any third party a copy of any Instruments of Service in unmodified form, without the Owner's prior written consent.

5.3 The Consultant shall have the right to include written, photographic or artistic representations of the Project among the Consultant's promotional and professional materials.

5.4 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 Subconsultants, 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 5.4.

ARTICLE 6

DISPUTE RESOLUTION

6.1 Unless otherwise agreed, the Consultant and its Subconsultants 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, 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 9.2.3.

ARTICLE 7

TERMINATION, SUSPENSION OR ABANDONMENT

7.1 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 Town's right to recover damages occasioned by any default of the Consultant.

7.2 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.

7.3 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 amount owed for Services performed prior to termination, together with Reimbursable Expenses, as described in Paragraph 10.1 hereof, incurred prior to termination.

7.4 In the event of termination, the Consultant shall promptly deliver to the Town originals and copies of all Instruments of Service developed under this Agreement to the time of termination subject to the restrictions on use and reuse of Instruments of Service set forth in Article 5 "Use of Consultant's Drawings, Specifications, and Documents".

ARTICLE 8

MISCELLANEOUS PROVISIONS

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

8.2 The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, directors and employees (collectively, Owner) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent errors, acts and omissions in the performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable. The Owner agrees, to the extent permitted by law and without waiving any common law or statutory defenses, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Owner's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Owner is legally liable. Notwithstanding the foregoing, the Owner's indemnity obligations hereunder shall be limited to the amount set forth in M.G.L. c. 258 or the coverage amounts in the Owner's insurance policies, whichever amount is higher. Neither the Owner nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or wilful or reckless misconduct, or for the negligence or wilful or reckless misconduct of others.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

8.7 The Consultant and the Consultant's Subconsultants 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

8.8 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 non-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:

Steven G. Cecil
The Cecil Group, Inc
241 A Street
Boston, Massachusetts 02210

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.

8.9 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.

8.10 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.

8.11 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.

8.12 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. The Owner may assert a right to recover damages either during or after performance of this Agreement.

8.13 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.

8.14 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. In particular, without limitation, the Consultant agrees to comply with all regulations pertaining to applications for state grants.

8.15 The provisions of Article 5, Article 6, Paragraph 8.2, Paragraph 8.8, Paragraph 8.9, Paragraph 8.10, Paragraph 9.6.1, Paragraph 11.1, 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 9

PAYMENTS TO THE CONSULTANT

9.1 REIMBURSABLE EXPENSES

9.1.1 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 9.1.1.1 through 9.1.1.3 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 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.

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

9.1.1.2 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).

9.1.1.3 Premium expense for additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that specified in Article 11.

9.1.2 The following expenses shall not be considered Reimbursable Expenses, and are included in the Consultant's compensation for Basic Services: (i) costs for computer use, data and word processing, facsimile transmission, routine duplication, etc., (ii) travel and related expenses, unless expressly approved in advance by the Owner in special circumstances, (iii) expenses for telecommunications services (including telephone and telecopier, long distance and local service charges, cellular telephone charges, pagers and other wireless telecommunications devices, etc.), (iv) costs of consumable office supplies, (v) interest and penalties, (vi) attorneys fees, and (vii) any other costs or expenses not specifically listed in subparagraph 9.1.1 or specifically approved in advance by the Owner.

9.2 PAYMENTS ON ACCOUNT OF SERVICES

9.2.1 Payments on account of Basic Services, Additional Services and Reimbursable Expenses shall be made monthly and in accordance with Article 10.

9.2.2 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 9. The Consultant's request for payment shall include a summary description of services performed under the task or tasks in such form and detail and with such supporting data as the Town 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.

9.2.3 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 9.2.4 below. The cumulative amounts of such progress payments to the Consultant shall not exceed the amount specified in Subparagraph 10.1.1.

9.2.4 Not more than eighty-five percent (85%) of the Basic Compensation, as specified in Article 10, shall be paid or payable prior to the delivery to the Owner of all final documents and reports.

9.2.5 Payments under this Agreement will be made only to the Consultant. The Consultant shall be responsible for payment of any of its Subconsultants.

9.2.6 The Consultant shall not be paid for any services not included in the contract scope of work.

9.2.7 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. 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

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

9.4 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.

9.5 CONSULTANT'S ACCOUNTING RECORDS

9.5.1 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.

ARTICLE 10

BASIS OF COMPENSATION

The Owner shall compensate the Consultant as follows:

10.1 BASIC COMPENSATION

10.1.1 For Basic Services as described in Article 2, Basic Compensation shall not exceed Two Hundred and Fifty-Four Thousand, Six Hundred and Ten Dollars (\$254,610), payable on a monthly basis for actual services performed. The Consultant's invoices and payments by the Owner shall be only for completed tasks or sub-tasks as shown in Exhibits A and H and completed in accordance with the standard set forth in Subparagraph 1.1.3 to the satisfaction of the Owner.

10.2 COMPENSATION FOR ADDITIONAL SERVICES

10.2.1 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 not greater than 2.5, 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 Subconsultants' 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.

10.2.2 For Additional Services of Subconsultants, the Consultant's compensation shall be equal to the amounts

billed to the Consultant for such services, subject to the provisions of Subparagraph 10.2.1.

10.3 REIMBURSABLE EXPENSES

10.3.1 For Reimbursable Expenses, as described in Paragraph 9.1, 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.

ARTICLE 11

OTHER CONDITIONS OR SERVICES

11.1 Insurance:

11.1.1 For survey, engineering, and architectural design services, 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 \$1,000,000.00 for each claim and \$2,000,000.00 annual aggregate. Such professional liability insurance shall cover the negligent professional errors, omissions and acts of the Consultant and/or business entity 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.

11.1.2 The Consultant shall maintain at the Consultant's expense, and shall file with the Owner a certificate evidencing, 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.

11.1.3 The Consultant 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.

11.1.4 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.

11.1.5 The Consultant shall require its Subconsultants to maintain similar insurance coverages as the Consultant is required to maintain under this Agreement, in amounts acceptable to the Owner.

11.1.6 The Owner shall be included as an additional insured on the Consultant's insurance policies, except for professional liability and workers' compensation.

11.1.7 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.

11.2 The Consultant shall not employ additional Subconsultants 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.

11.3 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, 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. 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.

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

11.5 The Consultant agrees as follows:

11.5.1 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, setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.

11.5.2 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 11.5, 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.

11.5.3 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.

11.5.4 The Consultant's non-compliance with any provision of this Paragraph 11.5 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 11.5 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.

11.6 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.

11.7 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.

11.8 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.

11.9 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.

11.10 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.

11.11 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 Ch. 29, S. 29F or Ch. 152, S. 25C.

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

11.13 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 Subconsultants and Owner's Consultant's
- Exhibit C** Key Personnel of Consultant and Primary Subconsultants
- Exhibit D** Schedule of 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

(Signatures on Page 13)

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

TOWN OF ACTON

THE CECIL GROUP, INC.

By: _____
Steven L. Ledoux, Town Manager

By: 

Steven G. Cecil, President

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

TOWN OF ACTON

By: 
Steven L. Ledoux, Town Manager

THE CECIL GROUP, INC.

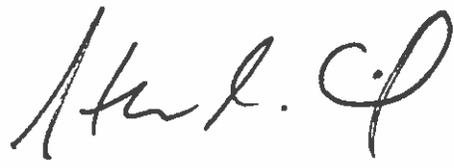
By: 
Steven G. Cecil, President

EXHIBIT A**SCOPE OF SERVICES****Town of Acton
Kelley's Corner Improvement Initiative****1. Project Initiation**

The Cecil Group will be responsible for providing the project coordination, communication and participation for the project. The first step in the process will be used to establish a detailed Work Plan and Communication Plan with Town staff and the Steering Committee. In conjunction with these tasks will be the clarification of the Study Area and adjacent areas of influence. The specific tasks will include:

1.1 Initial Meeting

An initial meeting with the Town Staff and Steering Committee will be held to review the overall goals and schedule for the project, confirming milestone and meeting dates. The agenda will include a review of the available information that is available and the sources, including previous reports and studies, plans and engineering data, surveys or other useful data. The discussion will include probable participants and interested parties in the process who are stakeholders in the future of Kelley's Corner and who should be pro-actively engaged and included in the outreach process. Methods for community information and engagement will be discussed, including the use of web-based tools for outreach and communication.

The roles and contributions of the participating entities will be discussed, including the various tasks and meetings in which they will contribute. A protocol will be established for internal coordination and communication, as well as media contacts and responses.

Key topics of these meetings will include:

- List of key stakeholders, prospects for interviews, and participants in the process.
- Schedule for meetings, agendas, locations and outreach process.
- Sources of data and information.
- Team roles and communication methods.

1.2 Communication Plan

A Communication Plan will be created as an extension of the Work Plan. It will list key individuals and entities and stakeholders in the process and describe the methods for outreach, public information, invitations and responses throughout the process. We anticipate that this will include mounting information on or linked to the Town website including the ability for public comments and responses to frequently asked questions, methods to contact and inform the media, lists of contacts and methods for announcing meetings, workshops, open houses and other forums that will be important to the process.

A series of meetings, telephone interviews and focus group meetings is anticipated with approximately 15-20 individuals and entities that are representative of key stakeholders within the Town Center and the transit-

oriented district that surrounds it at various points in the process, as described in the Scope of Services and schedule. The list in the Communication Plan will include property owners, local institutions or organizations, businesses proprietors and community advocates.

As part of the Communication Plan, The Cecil Group will prepare the agendas, presentation materials and facilitate a sequence of community workshops and charrettes as more fully described in the sequence of tasks listed below. To expand participation when meetings are held in the evenings, an informal open house will be held on the same date near the end of the afternoon, so that interested individuals who are not available in the evening can become informed and provide input into the overall process. The results will be assembled as notes and observations, and included in subsequent documents for the project.

1.3 Work Plan

The results of the initial meeting will be assembled in a Work Plan and Project Schedule that includes a specific list of resources and information, finalizes methodologies for various technical tasks, assigns responsibilities for assembling and distributing the information, and creates a specific schedule linked to target dates for all meetings and deliverables.

1.4 Confirmation of Study Area

A working session will be employed with the Town staff, Steering Committee and Project Team to more specifically define the boundaries of the Study Area and the areas of surrounding influence that could impact the outcomes of the project. These boundaries will be confirmed as the product of the meeting.

Task 1 Meetings:

- Staff Coordination (2) – Two staff coordination meetings to review and confirm, Communication Plan, Work Plan, and Study Area
- Steering Committee (1) – One Steering Committee meeting to review and confirm, Communication Plan, Work Plan, and Study Area

Task 1 Deliverables:

The following documents will be provided in electronic form suitable for transmittal and publication, and in hardcopy (20 copies):

- Communication Plan – Including the Project Directory
- Work Plan – Including the Public Participation programs
- Study Area – As a mapped boundary of the Study Area and adjacent areas of influence

2. Existing Conditions and Projections

The Project Team will analyze and define the existing conditions within the Study Area to fully characterize the built conditions, restrictions and opportunities. The Project Team will also develop projections of potential change that will be used in subsequent tasks to develop alternative and preferred scenarios.

2.1 Base Plans and Modeling

Base Plans will be prepared from existing plans and surveys of properties and rights of way as obtained from the public record. This will include review of public right of way plans, Town GIS, recent permit or project

plans, and state agency plans, as available. A composite Base Plan will be prepared for use in analyses and presentations of the existing conditions.

2.1.1 Three-Dimensional Modeling

As part of this task, a three-dimensional computer model will be created to indicate key relationships and form characteristics within the most densely developed portions of the study area, and to serve as a base for illustrative alternatives for infill development, open space and other improvement concepts in later phases of the project.

2.2 Land Use and Urban Design

The Project Team will examine the physical conditions and existing land use in the Study Area. This will include walking tour and site visits, producing a photographic inventory of the Study Area and its fabric and special conditions, organized as needed by subareas.

2.2.1 Land Use Patterns

The evaluation of land use patterns will use existing data to compile a project-specific G.I.S. database and mapping to depict and analyze land use patterns. Existing available information will be supplemented with field observations and consultation with Town staff. This will include planned or prospective developments within the area, and other nearby developments or changes that should be taken into account.

Once the database is established, a series of filtering procedures will be used to discern relevant implications relative to redevelopment goals, such as parcel size, vacancies, ownership patterns, relationship to parking or other factors.

2.2.2 Urban Design Analysis

The urban design analysis will consider the organization and qualities of the Study Area. The evaluation will take into account the historic evolution of Kelley's Corner, the evolution of building types and uses, and create an inventory of key locations and qualities that define the positive and negative characteristics of the area in relationship to transit-oriented, compact development patterns. Graphic and photographic summaries will consider view sheds and sequences associated with movement through the planning area.

2.2.3 Streetscape Conditions

An inventory of streetscape conditions will be undertaken to assess basic pavement conditions, accessibility, and problems that may need to be addressed in this project.

2.2.4 Susceptibility to Change Analysis

The Cecil Group will evaluate all parcels of land within the planning area relative to their susceptibility to change through significant redevelopment or adaptive reuse. This analysis will be based on the land use mapping, consultation with Town representatives and the team's economic representatives. The results will be provided in mapped format to provide a basis for understanding where planning and development tools may be needed or best applied.

2.2.5 Opportunities and Constraints

The results of the land use and development analyses will be summarized with presentation materials and written descriptions that provide findings and observations about opportunities and constraints for enhancing the Study Area and its environs as a town center.

2.3 Economics and Real Estate

It is essential that the market strategy for redeveloping Kelley's Corner be firmly grounded in a foundation of comprehensive demographic and economic data analysis. The economic and real estate evaluations will review existing information and develop new data on the conditions and perceptions that impact investment and reinvestment in Kelley's Corner. This effort will include the following tasks:

2.3.1 Demographic and Economic Context

Current and historic demographic and economic data on population, income, employment, wages, housing values, and economic structure of the study area will be gathered from the following sources:

- Census Bureau
- Census of Retail Trade
- Bureau of Labor Statistics
- Bureau of Economic Analysis

Comparison data will be collected and tabulated for Middlesex County and for state-wide data.

2.3.2 Business Interviews

Cambridge Economic Research will conduct extensive fieldwork, during which interviews will be held with the largest businesses in Kelley's Corner (e.g., Kmart, Shaw's, Not Your Average Joe's, Ace Hardware, Drone Amusement Arcade) as well as any others requested by the town. The purpose of these interviews will be to gain insight on the extent of their market area, their target customers, their likely future at the location, and what they see as the opportunities for redevelopment in Acton's Town Center.

2.3.4 Consultations with Property Owners

Cambridge Economic Research will hold consultations with all major property owners identified in the previous task regarding their short and long-term objectives for the properties. We will gauge interest in potentially redeveloping key properties for more intensive uses. Data on property values, market rents, and tenants will be gathered.

2.3.5 Consultations with Local Realtors

Cambridge Economic Research will consult with commercial realtors active in the local market regarding the highest and best uses for potential sites in Kelley's Corner. Data on property values and market rents for retail, commercial, and residential redeveloped property will be gathered. The likely availability of key redevelopment sites in Kelley's Corner will be explored with realtors. Concepts regarding highest and best reuses for key sites will be discussed with realtors. The appropriate mix and density of uses for Kelley's Corner will be addressed.

2.3.6 Identify the Potential Supply of Redevelopment Sites

Based on consultations with businesses, property owners, and realtors, Cambridge Economic Research will identify the potential supply of sites for redevelopment in Kelley's Corner. Sites will be classified for Short, Medium, and Longer Term Redevelopment.

2.3.7 Comprehensive Market Analysis of Potential for Redevelopment in Acton's Center

Building on the previous tasks, Cambridge Economic Research will provide a comprehensive market analysis of a range of potential reuses for key sites in Kelley's Corner. A complete set of data will be provided on market rents and values and occupancy for a mix of retail, restaurant, theatre, entertainment, office, laboratory, and residential reuses. Based on this process the Project Team will develop initial recommendations on the appropriate content and mix of new uses for key redevelopment sites in the Study Area.

2.4 Roads and Circulation

To fully understand and define the conditions of access and mobility that impact existing movements within the public rights of way and how that impacts the adjacent land use and development opportunities, the following tasks will be performed:

2.4.1 Review of Existing Studies

GPI will review available prior studies for the area, including studies by other consultants, MassDOT, the regional planning agency, the Town and other in-house efforts.

2.4.2 Site Walkover

GPI will complete a comprehensive walkover of the Study Area and adjacent areas to observe and identify the factors that could affect access and mobility, and to inform the detailed analyses that are completed in the following tasks.

2.4.3 Inventory and Data Collection

GPI will gather detailed physical and operating information for the area roadways and intersections including: vehicle, pedestrian and bicycle volumes, roadway geometrics, and traffic operating parameters. This task will include the following data collection:

- Inventory of pedestrian and bicycle facilities and amenities in the Study Area
- Conduct manual turning movement, vehicle classification, pedestrian and bicycle counts during the weekday AM peak period (7:00 to 9:00 AM), School Release Period (Assume 2 hr window), weekday PM (4:00 to 6:00 PM) and the Saturday midday peak period (11:00 AM to 2:00 PM) at the following locations:
 - Main Street (Route 27) at Massachusetts Avenue (Route 111))
 - Main Street (Route 27) at Private Driveway
 - Main Street (Route 27) at Route 2 eastbound ramps
 - Main Street (Route 27) at Route 2 westbound ramps
 - Main Street (Route 27) at Prospect Street
 - Main Street (Route 27) at School Street
 - Massachusetts Ave (Route 111) at Prospect Street
 - Massachusetts Ave (Route 111) at Charter Road (AM & School Release Only)
 - Massachusetts Ave (Route 111) at Private Driveway

- Massachusetts Ave (Route 2/111) at Piper Road/Taylor Road
 - Major Traffic Generator Driveways (assume 6 locations)
- Conduct a License Plate Survey (for weekday AM and PM, and Saturday only) to determine percentage of traffic to/from Kelley's Corner and traffic which travels through Kelley's Corner. This will be completed at four cordon locations.
 - Collect 96-hour Automatic Traffic Recorder (ATR) data to obtain data for two typical weekdays; Wednesday and Thursday, as well as a typical Saturday of daily traffic volumes, speeds and vehicle classifications at the following locations:
 - Main Street (Route 27) between Route 2 and Route 111
 - Main Street (Route 27) South of Route 111
 - Massachusetts Avenue (Route 111) west of Main Street
 - Massachusetts Avenue (Route 111) at directional ramps to Route 2 (2 locations)
 - Route 2 Exit 42 Ramps (4 locations)
 - Route 2 mainline between Exit 42 and 43 (1 ATR per direction)
 - Research and tabulate motor vehicle crash data available from MassDOT and the Town for the most recent three-year period available. Calculate motor vehicle crash rates at the Study Area intersections based on standard MassDOT guidelines
 - Research available data to determine historic growth rates for traffic volumes in the area
 - Research available data to determine seasonal variations in traffic volumes. If it is determined that the traffic counts were conducted in a below-average month, they will be seasonally adjusted to average month conditions
 - Collect existing public transportation information in the vicinity of the Project including school bus and public transportation routes, schedules, and ridership information

2.4.4 Traffic Projections

GPI will prepare an existing conditions analysis and a future projection of a No-Build traffic growth scenario to project the future transportation and traffic conditions in the Study Area with no change in land use. This will be accomplished through the previous data collection and these next tasks:

- Meet with the Town and the regional planning agencies to identify current and future projects that will affect traffic volumes in the area
- Based on the data collection and analyses, develop the 2013 Existing conditions traffic volume networks
- Develop the 2023 No-Build condition traffic volume networks. This will incorporate both the background historic growth rate and any additional traffic volumes expected to be generated by any other nearby projects that will use a ten-year planning horizon. The No-Build will also include any by-right reoccupation of existing vacant space

2.5 Other Infrastructure

GPI will review and analyze conditions relative to other infrastructure in the Study Area, based on existing plans and information, including:

- Stormwater drainage systems and any reported flooding
- Electric utilities, both above and below grade
- Communications utilities, both above and below grade
- Gas service, where available

This database will be confirmed with the relevant public agencies. This information will then be transferred to and included in the project Base Plan as layers of information appropriate for the subsequent design process.

2.6 Summary Report

A Summary Report will be prepared to present and summarize the results of the data collection, and the projections and trends of change in the Study Area and surrounding influences.

Task 2 Meetings

- Staff Coordination (2) – Regular coordination meetings with Town staff will continue
- Steering Committee (2)- Scheduled meetings with the Steering Committee will review the results of the analyses
- Public Workshops (1) and Open Houses (2)- In collaboration with the Town, the Project Team will help facilitate a Public Workshop and two Open Houses to identify, understand and reconfirm the current issues and opportunities in Kelley’s Corner
- Stakeholder Discussions (16) – Clustered sessions of stakeholder meetings and focus group meetings will be held to delve further into the opportunities and constraints that may be identified by those people most intimately familiar with conditions in the Study Area
- MassDOT Coordination (1) – An initial meeting with MassDOT will be held to inform the agency of the project and to review the potential scope of alternatives that may result from the study

Task 2 Deliverables

The following document will be provided in electronic form suitable for transmittal and publication, and in hardcopy (20 copies):

- Summary Report and Presentations on Conditions and Trends

3. Alternatives and Evaluations

The next steps in the project will be to generate and evaluate scenarios that provide pragmatic solutions to the redevelopment of Kelley’s Corner as a town center. These alternatives will be refined through an iterative process to develop a Preferred Scenario.

3.1 Preliminary Alternatives

A series of up to four preliminary alternative scenarios will be created by the Project Team in concert with Town staff and in consultation with the Steering Committee. Preliminary concepts will be generated for presentation and discussion at the community workshop, then refined and evaluated. The following components will be provided for each of the different approaches.

3.1.1 Urban Design Concepts

The urban design concepts will explore different locations and configuration for infill development or redevelopment, and consider the scale, massing and orientation of buildings relative to the streets, blocks and open spaces. Three dimensional representations will be created for the central portions of the study area, indicating the character of the area that could emerge. Images and photos of relevant examples of building types and architectural styles will be used to convey potential design characteristics, using the results of the visual preference survey as a basis for the examples.

3.1.2 Circulation Concepts

The circulation alternatives will consider methods to direct and manage vehicle traffic through intersection improvements and traffic calming measures that are consistent with supporting projected traffic demand. Pedestrian circulation patterns will be charted, along with bicycle paths and routes that may be integrated into the circulation network. The parking concepts will convey the potential supply and location of parking supplies needed to support the mixed-use development patterns created as part of the urban design concepts.

3.1.3 Preliminary Evaluations

A series of Town Staff, Steering Committee and Stakeholder meetings will be held to review and discuss the alternatives and to inform the Project Team on the next iteration of refined alternatives.

3.2 Refined Area Alternatives

From the results of the reviews of the Preliminary Alternatives, two to three relevant alternatives will be carried forward as Refined Area Alternatives and will be produced and evaluated according to the following tasks:

3.2.1 Composite Alternatives

The Preliminary Alternatives will be advanced as composites of the inputs from the Stakeholders, State, Steering Committee, Staff and other participants. They will be prepared as conceptual plans with notes and information appropriate for the subsequent evaluations. The scenarios will include the combination of land use and redevelopment and transportation improvement options to advance the goals for the town center.

3.2.2 Land Use and Development Alternatives

The land use and development alternatives will include a parcel by parcel evaluation of development potential and the build-out and/or reuse of the properties. These will be presented in the three-dimensional Project format for comparative purposes. These alternatives will include dimensional and other information necessary for reviewing the application of land use regulations through zoning to accomplish the plans

3.2.3 Circulation and Mobility

At the forefront will be consideration for the town center context and the need to encourage safety and accessibility for all modes of transportation. To this end, GPI will develop two future Build scenarios traffic volume networks. Build scenarios will include the complete reimagining of the Kelley's Corner land use per the objectives of this Project. Working with the Project team, the two Build scenarios will be developed which are responsive to the Town's walkable, mixed use objectives. This includes the following steps:

- The scenarios will start with removal of existing traffic. Using traffic counts, observations and license plate survey data traffic to/from existing land uses within Kelley's Corner will be removed from the network as a baseline for the other analyses.
- Working with Project Team, GPI will perform Trip Generation calculations for in accordance with Institute of Transportation Engineers (ITE) guidelines for Build Scenario 1 in order to determine the potential number of vehicular trips that would be generated by the Project.
- Working with Project Team, GPI will perform Trip Generation calculations for in accordance with Institute of Transportation Engineers (ITE) guidelines for Build Scenario 1 in order to determine the potential number of vehicular trips that would be generated by the Project.
- GPI will also calculate internal capture, pass-by, diverted link and transit credits applicable to the projects.
- GPI will then distribute the resulting net trip generation onto the project network using applicable means (Journey to Work Data, Market Research, prevailing traffic patterns) to establish 2023 Build Condition Networks

The concept plan will be developed to a level of detail that is sufficient for a comprehensive planning review, prior to the development of more detailed design and construction documents and will include lane and shoulder dimensions, curbs, traffic management, sidewalks, intersection lane configurations, and driveway access points.

The plans will be developed in concert with the streetscape and urban design elements to ensure adequate accommodations are made for identified streetscape design components. The streetscape and urban design components will include a complete schematic illustrative layout accompanied by diagrams, sketches and three-dimensional modeling of the streetscape and landscape elements, including materials, treatments, signage, lighting, wayfinding strategy, plantings and other aspects of the design approach.

3.2.4 Evaluations

The Refined Area Alternatives will be evaluated according to reasonable expectations for success of the project elements being implemented as a comprehensive approach to redefining the town center. The following evaluations will be summarized in a decision matrix for review and discussion.

- Development Feasibility

This analysis will include a financial evaluation of prototypical redevelopment versus existing conditions for four key sites in the Study Area. The feasibility pro forma will be constructed with all relevant revenue and cost categories. Observations concerning financial gaps and additional incentives or funding required to induce reinvestment will then be presented as part of the evaluation.

- Cost, Resources and Tools

Costs associated with the infrastructure improvements will be determined for each alternative. The options for financing these improvements will be presented to review the different resources and tools available for public and public-private-partnership financing of infrastructure projects.

- Regulatory Compliance

A review of the applicable local regulations, in particular zoning standards, will be completed to analyze the need for regulatory amendments to the local standards for implementation of the redevelopment scenarios.

The alternatives for regulatory programs will be considered in this stage of the analysis such as form-based codes and other innovative land use management techniques. These will be evaluated as to administrative and development feasibility.

- MassDOT Coordination Summary

The Project Team will meet with MassDOT regarding coordination of the project scenarios with state program objectives. A summary of the results of this meeting will be prepared as part of the project documentation and reviewed with the Town staff and Steering Committee.

3.3 Summary of Preferred Scenario

The preferred redevelopment strategy will be chosen through consultation with the stakeholders and as directed by the Town and Steering Committee. The preferred approach will be represented in illustrative drawings, summary descriptions and a compilation of potential amounts of types and uses, relationship to existing and potential zoning and regulatory standards, and applicable design standards drawn from the plan's recommendations.

Task 3 Meetings

- Staff Coordination (3) – Regular coordination meetings with Town staff will continue.
- Steering Committee (3)- Scheduled meetings with the Steering Committee will review the results of the Alternatives analyses and the Preferred Scenario.
- Public Workshop on Alternatives (1) and Open Houses (2) - In collaboration with the Town, the Project Team will help facilitate a Public Workshop and two Open Houses to review and discuss the alternatives for Kelley's Corner. The workshop will help refine the alternatives related to the Study Area. The team will prepare graphics, presentations and other materials for the meetings as necessary, ensuring that all communications are clear and easily understood.
- Stakeholder Discussions on key parcels(8) – Key parcels identified in the Preliminary and Refined Alternatives Analyses will be discussed with the property stakeholders to determine the viability and constraints to completion of the alternative.
- MassDOT Coordination (2) – Two meetings will be held separately with MassDOT to review the Preliminary and Refined Alternatives. A memorandum will be prepared to review the results and impact on the Preferred Scenario outcomes.

Task 3 Deliverables

The following documents will be provided in electronic form suitable for transmittal and publication, and in hardcopy (20 copies):

- Presentations and Evaluations of Alternatives
- MassDOT Coordination Memorandum
- Summary of Preferred Scenario (Memorandum)

4. Draft and Final Implementation Plan

4.1 Overall Plan and Implementation Strategy

The overall approach will be designated through the input and directions of the Town and its Steering Committee. The overall plan will be illustrated with plans and diagrams that indicate the character and extent of development concepts, public space and landscape improvements, pedestrian and vehicular circulation, and other infrastructure improvements. A three-dimensional massing and design concept will be created, portraying relationships to existing development, and area streets, buildings and features.

The plan will be accompanied with an implementation strategy that outlines the financial planning and business plan needed to accomplish the project, and the required administrative and regulatory approaches. This will include a combination of infrastructure financing and land use regulation amendments.

4.2 Land Use and Development Elements

The land use and development elements of the Town Center strategy will include a guiding vision, phasing and the program of recommendations for implementation.

4.2.1 Vision

The purpose of this step is to create and articulate a district-wide vision for the future of the Town Center and planning area that will fulfill the goals of the community. Within this vision, the specific strategies and improvements will be articulated for land use and urban design, circulation, parking, the pedestrian environment and the potential for redevelopment of target sites.

4.2.2 Phasing

A phasing plan will be developed that sets the stage for redevelopment combining both the public sector and private sector initiatives that create development projects, such as zoning amendments and tax credit approval.

4.2.3 Programs and Actions

The programs and actions necessary or as potential assistance in the advancement of the vision such as grant funding, land use reform, and utility investment programs, will be listed and reviewed according to their applicability to the overall land use plan. Accompanying the plan will be a list of the implementation requirements and methods that would need to be applied to support the components of each scenario, including the zoning and other land use regulations.

4.3 Infrastructure Plan

The infrastructure plan elements of the Town Center strategy will include a program of traffic and circulation improvements and other infrastructure improvements together with the recommendations for phasing, information for grant applications and other resources for implementation.

4.3.1 Traffic and Circulation

The traffic and circulation elements of the infrastructure plan will include a program of regional and local implications for change. This will include concepts that improve local circulation and effect regional traffic flow. The plan will be composed of directives and design elements that will be reviewed at multiple levels of government and certain proposals will be contingent on the actions of other agencies that will be identified.

4.3.2 Infrastructure Improvements

A complete program of infrastructure improvements will be prepared and will include the streetscape, pedestrian environment and utility upgrades that will be necessary to accomplish the infrastructure plan. This will include links into and through the Study Area.

4.3.3 Phasing

A phasing plan will be developed that sets the stage for redevelopment combing both the public sector and private sector initiatives for infrastructure improvements and links them to the land use redevelopment plan.

4.3.4 Costs Estimates

Preliminary cost estimates will be prepared for the purpose of considering program and financial needs of the infrastructure plans.

4.3.5 Resources

The programs and actions necessary or as potential assistance in the advancement of the vision such as grant funding, land use reform, and utility investment programs, will be listed and reviewed according to their applicability to the infrastructure plan.

4.4 Implementation Support

4.4.1 Zoning

Drafts of zoning amendments determined needed to accomplish the redevelopment plan will be provided to the Town. These are expected to include changes to uses, dimensional standards, and performance standards.

4.4.2 Design Standards

A draft set of design standards will be prepared for the Town that defines the preferred outcomes of the redevelopment. These design standards will include Low Impact Development and other site improvement standards, building and facilities design standards, and circulation and parking standards.

4.4.3 Infrastructure Design Concept

The extent and scope of the infrastructure design concept will be determined in concert with Town staff so that it is consistent with the overall planning and infrastructure strategy and scaled to the resources being sought

through grant sources. The infrastructure design concept will include supporting information that includes the following:

Survey

A project area survey will be prepared, for the rights-of-way and infrastructure based on existing plans and surveys, and as supplemented with additional survey data necessary for the Infrastructure Plans. The extent and scope of will be confirmed, so that it is appropriate for the level of design and the extent of the area chosen for concept design relative to prospective grants and funding sources.

Plans

Plans will be prepared that include design information on the proposed improvements to the rights-of-way and the adjacent property connections (e.g. drainage, utilities, driveways), suitable for the implementation steps such as the MassWorks grant application as interpreted to achieve 25% completion. The documents are expected to include:

- Layout plans
- Drainage concept plans
- Utility plans and diagrams
- Signalization concepts
- Lighting design concept
- Typical cross sections/profile descriptions
- Landscaping and streetscaping/planting plan
- Enlarged plans and sketches, special streetscape features
- Wayfinding/non-regulatory signage plan
- Outline specifications
- Rendered plan and 3 rendered ground level perspectives

Cost Estimates

Preliminary cost estimates will be provided that meet the level of detail provided in the infrastructure plans.

The Plans and Cost Estimates will be prepared in draft form for review and comment by Town Staff and coordination with the Steering Committee relative to the project goals. Based on review and comments, final plans and documents will be prepared for submittal to the Town and inclusion in appropriate grant applications.

Task 4 Meetings

- Staff Coordination (4) - Regular coordination meetings with Town staff will continue through the conclusion of the Project.
- Steering Committee (2) – Two scheduled meetings will be held with the Steering Committee to review the draft and final plans

- Public Workshop (1) and Open Houses (2) – A public workshop and two open houses will be held to present the Draft Plan and Implementation Strategy, and to roll-out the Final Plan and Implementation Strategy
- MassDOT Coordination (2) - Two coordination meetings with MassDOT are anticipated.

Task 4 Deliverables

The following documents will be provided in electronic form suitable for transmittal and publication, and in hardcopy (30 copies):

- Draft and Final Plan and Implementation Strategy
- Zoning Amendments
- Design Standards
- Infrastructure Plans (25%)

EXHIBIT B

CONSULTANT'S SUBCONSULTANTS AND OWNER'S CONSULTANTS

Approved Consultant's Subconsultants

Greenman-Pedersen, Inc.

Byrne McKinney & Associates, Inc.

Cambridge Economic Research

Innovative Data, LLC

Welch Associates, Inc.

Owner's Consultants

None

EXHIBIT C

KEY PERSONNEL OF CONSULTANT AND PRIMARY SUBCONSULTANTS

Principal – in-charge **Steven Cecil, AIA, ASLA, The Cecil Group, Inc.**

Project Manager **Steven Cecil, AIA, ASLA, The Cecil Group, Inc.**

Other

Greenman-Pedersen, Inc. **Jason DeGray P.E., P.T.O.E**

Cambridge Economic Research **Margaret Collins, AICP**

Byrne McKinney & Associates, Inc. **Pamela McKinney MAI, CRE**

EXHIBIT D

SCHEDULE OF HOURLY BILLING RATES

As of January 1, 2013

Services when provided on an hourly basis and additional services, if any, shall be computed at the following standard hourly billing rates:

- \$195 per hour for Principals
- \$ 140 per hour for Professional Level A (Senior Designers and Senior Project Managers)
- \$ 115 per hour for Professional Level B (Project Managers and Senior Job Captains)
- \$ 95 per hour for Professional Level C (Senior Professional Staff)
- \$ 85 per hour for Professional Level D (Senior Technical Staff and Junior Professional Staff)
- \$ 70 per hour for Professional Level E (Junior Technical Staff)

Reimbursable expenses shall include costs associated with copies of all drawings, specifications, plans, reports and cost estimates, copies of prints, travel, transportation, lodging and board in connection with the project or the performances of our services, long-distance telephone calls, telefaxes, couriers and messengers, on-site or in-house photography and other project related expenses and taxes incurred by The Cecil Group, Inc. or by our subconsultants. The cost of subconsultants necessary in the performance of our services shall also be deemed a reimbursable expense unless agreed to otherwise. Reimbursable expenses shall be billed at 1.15 times our cost. Models, special renderings, fees for special consultants, and photographic services are considered extras and are also reimbursable at 1.15 times our cost. Full size computer plots (24"x36" or larger) produced in house by The Cecil Group will be billed at a standard rate of \$30 per sheet as a reimbursable cost.

The hourly charges set forth above are subject to review by The Cecil Group, Inc. annually and may be adjusted upon written notice to the client to correspond with the hourly rates then being charged by the firm on other similar projects.

EXHIBIT E**PROJECT SCHEDULE****Kelley's Corner Improvement Initiative****Acton, MA**

The following is the estimated time to complete each of the major tasks of the Kelley's Corner Improvement Initiative. Tasks will be completed within the time listed in addition to time required by the Owner, and prepared on or before the "submittal by date." These may be subject to change according to the project progress, and in accordance with the agreement between the Owner and Consultant.

Task	Time to Complete	Submittal-By Date
I. Project Initiation	4 weeks	March 30, 2014
II. Existing Conditions and Projections	12 weeks	June 30, 2014
III. Alternatives and Evaluations	20 weeks	November 30, 2014
IV. Implementation Plan	30 weeks	July 1, 2015
V. State Grant Application	4 weeks	September 1, 2015
VI. Zoning Article for Town Meeting Warrant	4 weeks	September 15, 2015

EXHIBIT F

PROGRAM MATERIALS and OTHER MATERIALS PROVIDED BY OWNER

Kelley's Corner area-specific materials: <http://doc.acton-ma.gov/dsweb/View/Collection-5547>.

Acton 2020 Comprehensive Community Plan: <http://www.acton2020.info/>.

Town of Acton home page: <http://www.acton-ma.gov/>.

Town of Acton GIS: <http://www.acton-ma.gov/gis>

EXHIBIT G

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

Survey map of Kelley's Corner prepared for 1998 Sewer Study: <http://doc.acton-ma.gov/dsweb/View/Collection-5641>
With supplemental information obtainable as needed from sewer design consultant firm (Woodward & Curren)

Acton Engineering Department field notes – map dated 9/4/2012: <http://doc.acton-ma.gov/dsweb/Get/Document-39034/Acton%20Engineering%20Dept%20Field%20Notes%20-%20Kelleys%20Corner%20Improvements.pdf>

Kelley's Corner various historical maps: <http://doc.acton-ma.gov/dsweb/View/Collection-2939>

EXHIBIT H**CONSULTANT'S FEE PROPOSAL****Breakdown of Professional Service Fees by Task and Sub-task**

	Task Totals
1. Project Initiation	
1.1 Initial Meeting	\$ 1,100
1.2 Communication Plan	\$ 500
1.3 Work Plan	\$ 800
1.4 Confirmation of Study Area	\$ 800
Task Meetings	\$ 1,600
<i>Task 1 Subtotal Fee</i>	\$ 4,800
2. Existing Conditions and Projections	
2.1 Base Plans and Modeling	\$ 3,300
2.2 Land Use and Urban Design	\$ 8,800
2.3 Economics and Real Estate	\$ 10,800
2.4 Roads and Circulation	\$ 42,500
2.5 Other Infrastructure	\$ 3,500
2.6 Summary Report	\$ 8,000
Task Meetings	\$ 9,700
<i>Task 2 Subtotal Fee</i>	\$ 86,600
3. Alternatives and Evaluations	
3.1 Preliminary Alternatives	\$ 8,300
3.2 Refined Area Alternatives	

3.2.1 Composite Alternatives	\$ 2,400
3.2.2 Land Use and Development Alternatives	\$ 6,800
3.2.3 Circulation and Mobility	\$ 12,500
3.2.4 Evaluations	
Development Feasibility	\$ 12,300
Cost and Resources	\$ 6,000
Regulatory Compliance	\$ 1,600
MassDOT Coordination Summary	\$ 1,100
3.3 Summary of Preferred Scenario	\$ 3,600
Task Meetings	\$ 10,400
<i>Task 3 Subtotal Fee</i>	\$ 65,000
4. Draft and Final Implementation Plan	
4.1 Overall Plan and Implementation Strategy	\$ 2,400
4.2 Land Use and Development Elements	
4.2.1 Vision	\$ 1,600
4.2.2 Phasing	\$ 1,200
4.2.3 Programs and Actions	\$ 1,400
4.3 Infrastructure Plan	
4.3.1 Traffic and Circulation	\$ 8,600
4.3.2 Infrastructure Improvements	\$ 2,400
4.3.3 Phasing	\$ 800
4.3.4 Costs Estimates	\$ 800
4.3.5 Resources	\$ 800
4.4 Implementation Support	

4.4.1 Zoning	\$ 11,500
4.4.2 Design Standards	\$ 10,500
4.4.3 Infrastructure Design Concept	
Survey	\$ 10,000
Plans	\$ 35,800
Cost Estimates	\$ 2,000
Task Meetings	\$ 5,800
<i>Task 4 Subtotal Fee</i>	\$ 95,600
Expenses: Increase in Professional Liability Insurance	\$ 2,610
Total Project Fee	\$ 254,610