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CONTRACT FOR PROJECT MANAGEMENT SERVICES

CONTRACT # RFQ 185/031/22

DATE: 6/28/22

This Contract is entered into on, or as of, this date by and between the Town of Andover (the "Town"), and

Contractor: PMA Consultants_
Address: 35 Braintree Hill Office Park, Suite 300
Braintree, MA 02184
Telephone Number: 781-519-1071
Fax Number: N/A

to provide the Project Management services required to complete the Basic and Extra Services described herein for the construction of Andover Town Offices Improvements RFQ #185/031/22 ("the Project").

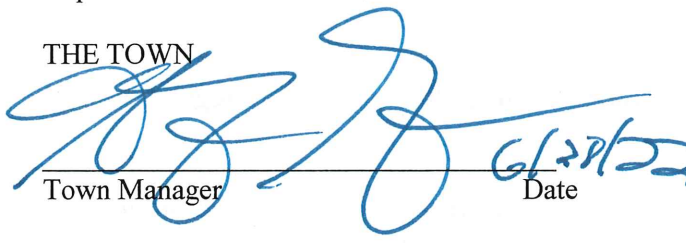
The Owner's Project Manager is authorized to perform the services required by this Contract through the Design Phase and final completion of the construction project.

For the performance of the services required under this Contract for the Design and Construction Phase, the Owner's Project Manager shall be compensated by the Town for Basic Services in accordance with the Payment Schedule included as Attachment A.

IN WITNESS WHEREOF, the Town and the Owner's Project Manager have caused this Contract to be executed by their respective authorized officers.

THE TOWN

THE CONTRACTOR


Town Manager


Signature

6/28/22
Date

6/1/2022
Date

STEPHEN F. RUSTEIKA JR.
Print Name & Title

EXECUTIVE DIRECTOR
CERTIFICATION OF AVAILABLE FUNDS

AMT 23, FY22 64690-5700

Approved as to form:

Thomas J. Uebel 6/22/22

Town Counsel



Town Accountant

ARTICLE 1: DEFINITIONS

APPROVAL – a written communication from the Town approving either the work of the current Phase, as identified on Attachment A, or authorizing the Owner's Project Manager to proceed to the next Phase or approving

the scope and compensation for either Extra Services or Reimbursable Expenses.

ARCHITECT/ENGINEER – herein also referred to as the **DESIGNER** -- the person or firm with whom the Town has contracted to perform the professional designer services for this Project.

BASIC SERVICES – the minimum scope of services to be provided by the Owner’s Project Manager under this Contract, unless the Contract is otherwise terminated pursuant to Article 12.

CERTIFICATE OF FINAL COMPLETION – the form which contains the certification of the Designer, OPM and the Town that the Project has reached Final Completion.

COMMISSIONING CONSULTANT – a person or firm which may be engaged by the Town to provide building commissioning services, including advisory services during design and construction.

CONTRACT – this Contract, inclusive of all Attachments, between the Town and the Owner’s Project Manager; all written amendments to this Contract; and all Approvals issued pursuant to this Contract.

CONTRACTOR or GENERAL CONTRACTOR – the person or firm with whom the Town has contracted to perform the construction for this Project pursuant to the provisions of G.L. c. 149, §§44A-44J.

EXTRA SERVICES – services requested by the Town to be performed by the Owner’s Project Manager but which are additional (or “extra”) to the services performed as Basic Services.

FEE FOR BASIC SERVICES – the fee to be paid to the Owner’s Project Manager for satisfactorily performing, in the Town’s sole discretion, the Basic Services required under this Contract, exclusive of the compensation to which the Owner’s Project Manager is entitled pursuant to Articles 9 and 10.

FINAL COMPLETION – The work has been completed in accordance with the Construction Contract Documents.

GENERAL LAWS – the Massachusetts General Laws as amended, including any rules, regulations and administrative procedures implementing said laws.

NOTICE to PROCEED – the written communication issued by the Town to the Contractor authorizing the Contractor to proceed with the services specified in the construction contract and establishing the date for commencement of the contract time.

OWNER’S PROJECT MANAGER – the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other legal entity identified as such on page one of this Contract performing the professional Project Management Services under this Contract.

PHASE – a distinct portion of the work of this Contract and its associated duration, as identified on Attachment A. Prior Approval to proceed for each Phase is required from the Owner.

PRINCIPALS – the owners and/or officers of the Owner’s Project Manager who are actively involved in the management of the Project.

PROJECT – all work that pertains to the study, planning, design, construction, reconstruction, installation, demolition, maintenance or repair, if any, as defined in the Project Scope and Budget Agreement or Project Funding Agreement .

PROJECT BUDGET – a complete and full enumeration of all costs of the Project.

PROJECT DIRECTOR – the employee of the Owner’s Project Manager who has been designated in writing by the Owner’s Project Manager as its authorized representative, as approved by the Owner, pursuant to the requirements of M.G.L. c.149 §44A½ or G.L. c. 149A, § 2, as the case may be, for an “owner’s project manager” and 963 CMR 2.00 et seq., and shall be the person who shall oversee and be responsible for all Project Management Services provided under this Contract. The Project Director shall be certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

PROJECT REPRESENTATIVE – the employee or a Sub-consultant of the Owner’s Project Manager, who shall be dedicated exclusively to the Project, on-site full-time during the Construction Phase in accordance with the requirements of Article 8.6.2.

PROJECT SCHEDULE – a complete list of all activities, time and sequence required to complete the Project.

REIMBURSABLE SERVICES OR REIMBURSABLE EXPENSES – the cost of services requested by the Owner to be performed by the Owner’s Project Manager or the cost of expenses paid by the Owner’s Project Manager that are reimbursable pursuant to the provisions of Article 10.

SUBCONTRACTOR – for purposes of a project utilizing the design-bid-build construction delivery method pursuant to G.L. c. 149, a person or entity having a direct contractual relationship with the Contractor, who has the contract to perform the construction of the Project, except as otherwise specifically provided herein or as required by Law.

SUBCONSULTANT – any individual, company, firm, or business having a direct contractual relationship with the Owner’s Project Manager, who provides services on the Project.

ARTICLE 2: RELATIONSHIP OF THE PARTIES

- 2.1 The Owner’s Project Manager shall act as an independent contractor of the Town in providing the services required under this Contract.
- 2.2 The Owner’s Project Manager warrants and represents to the Town that it has fully, completely and truthfully represented the qualifications and skills of the Owner’s Project Manager, its Sub-consultants, agents, servants and employees in the proposal submitted by the Owner’s Project Manager, the Contract documents and in all communications with the Owner relative to this Contract and the services to be performed hereunder by the Owner’s Project Manager, its Sub-consultants, agents, servants and employees.
- 2.3 The Owner’s Project Manager shall perform its services under this Contract with no less than that degree of skill and care ordinarily exercised by similarly situated members of the Owner’s Project Manager’s profession on projects of similar size, scope and complexity as is involved on the Project. The Owner’s Project Manager’s services shall be rendered in accordance with this Contract.
- 2.4 The Parties hereto agree that the Designer is solely responsible for the design requirements and design criteria for the Project (except to the extent specifically delegated to others) and for performing in accordance with the contract between the Owner and Designer.
- 2.5 The Parties hereto agree that the Contractor shall be solely responsible for construction means, methods,

techniques, sequences and procedures, the Contractor's schedules, and for safety precautions and programs in connection with the Project and for performing in accordance with the Owner-Contractor Agreement. The Owner's Project Manager shall be responsible for the Owner's Project Manager's acts or omissions but shall not have control over or charge over acts or omissions of the Contractors, Subcontractors, or the agents or employees of the Contractor, CM at Risk, Subcontractors, the Designer, the Town or the Commissioning Consultant.

- 2.6 Nothing in this Contract shall be construed as an assumption by the Owner's Project Manager of the responsibilities or duties of the Contractor or the Designer. The Owner's Project Manager's services shall be rendered compatibly and in coordination with the services provided by the Designer. It is not intended that the services of the Owner's Project Manager and Designer be competitive or duplicative, but rather complementary. The Owner's Project Manager shall be entitled to rely upon the Designer and Contractor for the proper performance of their obligations pursuant to their respective contracts with the Town.

ARTICLE 3: RESPONSIBILITIES OF THE OWNER

- 3.1 The Town shall designate an individual or individuals who shall have the authority to act on behalf of the Town under this Contract and who shall be responsible for day-to-day communication between the Town and the Owner's Project Manager.
- 3.2 To the extent such data is available, the Town shall furnish to the Owner's Project Manager existing surveys of the Project site, building plans, borings, test pits, structural, mechanical, chemical or other test data, tests for air and water pollution and for hazardous materials, photographs and utility information. The Owner's Project Manager shall be entitled to reasonably rely upon the sufficiency and accuracy of the information furnished under this Article 3, provided that the Owner's Project Manager shall notify the Town in writing of any deficiencies in such data that the Owner's Project Manager becomes aware of.

ARTICLE 4: RESPONSIBILITIES OF THE OWNER'S PROJECT MANAGER

- 4.1 The Owner's Project Manager shall provide project management services to monitor procurement procedures, design, construction and other related activities and to facilitate, coordinate and manage the Project with respect to timely performance in accordance with the Project Schedule and monitor the quality of services and workmanship and shall recommend courses of action to the Town when respective contractual requirements are not being fulfilled. If the Owner's Project Manager is authorized to proceed with services beyond the Schematic Design Phase services shall continue through substantial use and occupancy by the Town, and Project closeout.
- 4.2 The Owner's Project Manager shall perform the services required under this Agreement in conformance with applicable federal, state, and local laws, by-laws and regulations.
- 4.3 The Owner's Project Manager shall report to the Town any act or inaction in connection with the Project which the Owner's Project Manager believes creates a substantial health or safety risk. Notwithstanding the immediately preceding sentence, the Owner's Project Manager shall not assume responsibility for safety precautions and programs in connection with the Project, which shall remain the sole responsibility of the Contractor.
- 4.4 The Owner's Project Manager acknowledges the importance that the Owner attributes to the abilities and qualifications of the key members of the Owner's Project Manager's team, including Sub-consultants, and the continuity of key members' participation in the services to be provided under this Contract. This

Contract has been entered into on the representation of the Owner's Project Manager that the individuals, consultants, assignments and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the Sub-consultants, listed in Attachment B, shall take place without the prior written approval of the Town, except when necessitated by causes beyond the Owner's Project Manager's control. If the Owner's Project Manager proposes to replace one of the key members of the Owner's Project Manager's team, the Owner's Project Manager shall propose a person or consultant with qualifications at least equal to the person or firm the Owner's Project Manager proposes to replace. The Town shall have the right to approve any substitution or replacement or change in status for the persons or Sub-consultants listed in Attachment B and such approval shall not be unreasonably withheld. At the request of the Town, the Owner's Project Manager shall consult with the Town to resolve any situation in which the Town determines that a member of the Owner's Project Manager's team is failing to perform services in an acceptable manner to the Owner. The Town shall have the right to direct the removal of any such person or consultant. No act or omission of the Town made or permitted under this Section shall relieve the Owner's Project Manager of its responsibility for the performance of the services specified in this Contract.

- 4.5 The Owner's Project Manager shall employ at all times professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely and high quality performance of the obligations of the Owner's Project Manager.
- 4.6 The Owner's Project Manager shall be and shall remain liable to the Town for all damages incurred by the Town as a result of the failure of the Owner's Project Manager to perform in conformance with the terms and conditions of this Contract.

ARTICLE 5: SUBCONSULTANTS

- 5.1 The Owner's Project Manager shall not employ consultants, sub-consultants, sublet, assign or transfer any part of its services or obligations under this Agreement without the prior approval of and written consent of the Town. The employment of Sub-consultants shall not in any way relieve the Owner's Project Manager from its responsibilities under this Contract. Nor shall the Town's approval of a Sub-consultant in any way relieve the Owner's Project Manager from its responsibilities under this Contract.
- 5.2 Upon request, the Owner's Project Manager shall provide the Town copies of its agreements with Sub-consultants, including amendments thereto, and shall consult with the Town with respect to the inclusion therein of appropriate terms and conditions to assure timely, efficient and competent performance of the Sub-consultants.
- 5.3 The OPM shall be responsible for all compensation to be paid to a sub-consultant. No Sub-consultant shall have recourse against the Town for payment of monies alleged to be owed to the Sub-consultant by the Owner's Project Manager, and the Owner's Project Manager shall include in all contracts with its Sub-consultants language so providing.
- 5.4 All contracts between the Owner's Project Manager and its Sub-consultants shall include a provision in which the Town's rights to initiate corrective action shall be stipulated.

ARTICLE 6: TERM AND TIMELY PERFORMANCE

- 6.1 The Owner's Project Manager acknowledges that expeditious completion of the Owner's Project Manager's services and the Project is of the utmost importance to the Town. The term of this Agreement

shall commence on the date stipulated in an Approval to proceed from the Town. The Owner's Project Manager shall complete the services required under this Contract in a prompt and continuous manner. The Owner's Project Manager shall perform its services in a timely manner and shall not delay the work of the Designer or Contractor. The Owner's Project Manager shall monitor the performance of the Designer and the Contractor in accordance with schedules of performance that are established under their contracts with the Town. The Owner's Project Manager shall immediately advise the Town, as well as the Designer or the Contractor, in writing, any time the Owner's Project Manager determines that either the Designer or the Contractor's performance is jeopardizing the Project Schedule or the Project Budget.

- 6.2 Time is of the essence in the performance of the Owner's Project Manager's obligations under this Agreement and under any amendment. The Owner's Project Manager agrees that no other work in its organization will be permitted to interfere with its timely performance of the work required under this Agreement or any amendment.
- 6.3 The Owner's Project Manager's services are to be provided in accordance with the time schedule set forth in this Agreement. If the schedule changes causing the need for revisions to the Owner's Project Manager's services, the Owner's Project Manager shall notify the Town of the revisions to its services. The Town shall have the right to extend the term of this Contract by amendment. All the rights and obligations of the parties for such extended periods shall be as set forth in this Contract or in the amendment.

ARTICLE 7: COMPENSATION

- 7.1 For the satisfactory performance of all services required pursuant to this Contract, excluding those services specified under Articles 9 and 10, the Owner's Project Manager shall be compensated by the Town in an amount up to the Not-to-Exceed Fee for Basic Services, identified on Attachment A. The Owner's Project Manager shall submit invoices on a monthly basis in accordance with the Payment Schedule included as Attachment A. The Town shall make payments to the Owner's Project Manager within 30 days of the Town's approval of the invoice, which approval shall not be unreasonably withheld or delayed.
- 7.2 The Fee for Basic Services shall include, but not necessarily be limited to, all labor, overhead, profit, insurance, legal services, transportation, communication expenses, reasonable printing and copying necessary for completion of the Project. The fee for Basic Services also shall include (a) the costs of rebidding and re-solicitation of proposals, bids, or qualifications if due to the fault of the Owner's Project Manager, and (b) assisting the Town as provided by section 8.1.4.2 in litigation or resolution of claims or other administrative proceedings associated with a bid protest arising out of the Designer contract or the construction contract and for assistance beyond the requirements of 8.1.4.2 if such litigation or claims are due to the fault of the Owner's Project Manager. The OPM shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the OPM in the preparation of the bid documents as reasonably determined by the Town.
- 7.3 When the Owner's Project Manager receives payment from the Town, the Owner's Project Manager shall promptly make payment to each Sub-consultant whose work was included in the work for which such payment was received. The Town shall have the contractual right to investigate any breach of performance of a Sub-consultant and to initiate corrective measures it determines are necessary and in the best interest of the Town. All contracts between the Owner's Project Manager and its Sub-consultants shall include a provision in which the Town's rights to initiate corrective action shall be stipulated.
- 7.4 The Owner's Project Manager shall be paid the remainder of the Fee for Basic Services, less previous payments, upon acceptance by the Town of the Certificate of Final Completion and submission of evaluations.

ARTICLE 8: BASIC SERVICES

The Owner's Project Manager shall perform the following Basic Services:

8.1 Project Management (For All Phases)

8.1.1 The Owner's Project Manager shall prepare a communication and document control procedure during the Design Phase and continue to update it as specified for the duration of the Project. This procedure shall detail the responsibilities and lines of communication among all Project participants (Town, Owner's Project Manager, Designer, Contractor, Subcontractors, and other consultants, vendors or suppliers) and establish the procedure for correspondence, document control, designer and contractor submittal logs, change order reporting logs and other tracking logs, as needed. A draft of the communication plan shall be submitted to the Town for approval within 30 days of the Approval to proceed with the Contract and be further updated (a) as needed to include the award of Construction Contract(s) and no later than 30 days after approval to proceed to the Construction Phase of the Project. The Owner's Project Manager shall include the Designer in its distribution of the Project Budget, Schedule, Monthly Progress Report and other reports as appropriate and as outlined in the Communications Plan.

8.1.2 The Owner's Project Manager shall attend meetings with representatives of the Town, municipal administration and the school department, and attend neighborhood or other public meetings relating to the Project, and participate as a member of the Owner's Prequalification Committee, The Owner's Project Manager shall take minutes of all of the above-referenced meetings and promptly distribute minutes of these meetings to the Town.

8.1.3 The Owner's Project Manager shall review all applications for payments, requisitions and invoices relating to the Project as submitted by the Designer, equipment vendors and all other contractors and supplier and make recommendations to the Town relative to amounts due.

8.1.4 Project Control

During the Design Phase of this Contract, the Owner's Project Manager shall monitor and report to the Town any changes to the Design Budget, Scope and Schedule established in the Owner-Authority Design Study Agreement.

8.1.5 Project Budget

The Owner's Project Manager shall prepare a detailed baseline Project Budget in a form acceptable to the Town, which will be submitted to the Town for approval. The Owner's Project Manager shall monitor and compare all Designer estimates, contractor bids, and other cost information to this Project Budget and identify and report all variances to the Town. The Owner's Project Manager shall maintain and update the baseline Project Budget throughout the term of this Contract. The Owner's Project Manager shall report any variances to the baseline Project Budget as part of the Monthly Progress Report.

The Owner's Project Manager shall prepare revisions to the baseline Project Budget, as needed, and submit them to the Town for approval.

8.1.6 Cost Estimating

The Owner's Project Manager shall prepare detailed independent cost estimates at each Design phase, when required by the Town, or, at the request of the Town, shall review the Designer's cost estimates at each Design Phase as well as through construction. If the Town requires the Owner's Project Manager to prepare an independent cost estimate, the Owner's Project Manager shall compare its cost estimate to that prepared by the Designer to identify and notify the Town of any variances.

In the event that the cost as estimated by the Designer exceeds the construction cost in the Project Budget at any of the Design phases, the Owner's Project Manager shall consult with the Designer and recommend to the Town appropriate revisions to the scope of work.

The Owner's Project Manager shall provide cost estimating services, as may be required, to develop cash flows, and provide updated cash flows with its Monthly Progress Report described in Article 8.1.3.

During the schematic design Phase, the Owner's Project Manager shall prepare a construction cost estimate with aggregated unit rates and quantities supporting each item.

8.1.7 Project Schedule

The Owner's Project Manager shall prepare a Project Schedule in a form acceptable to the Town, which shall be submitted to the Town for approval.

The Owner's Project Manager shall prepare revisions to the Project Schedule, as needed, and submit them to the Town for approval.

8.1.8 Construction Schedule

The Contractor shall be responsible for preparing and updating its construction schedule on a monthly basis. The Owner's Project Manager shall meet once each month with the Contractor and Designer to review and update its schedule, develop the monthly progress information to support the Contractor's payment estimate, and monitor the Contractor's performance for compliance with its contract.

The Owner's Project Manager shall notify the Town of and include in its Monthly Progress Report any significant changes or delays to the construction schedule. The Owner's Project Manager shall make appropriate recommendations to the Town relative to the actions that should be taken by the Contractor and/or advise the Town when liquidated damages, if included in the construction contract, are anticipated to be incurred.

8.1.9 Monthly Progress Report

The Owner's Project Manager shall submit to the Town a written Monthly Progress Report summarizing activity during the preceding calendar month. The Monthly Progress Report shall be submitted in a format acceptable to the Town and shall describe work performed by all project participants (OPM, Designer, and Contractor) during the reporting period and work planned for the next reporting period. The report shall also address matters of schedule adherence (Project Schedule as well as individual completion percentages for design and construction), costs to date (updated Project Budget and actual expenses incurred), change orders and potential change orders, cash flow projections, Contractor's safety performance, Designer's QA/QC, Contractor's compliance, community issues, Designer and Contractor's MBE/WBE activities, any issues that could

result in additional time and/or additional costs and any anticipated problems/concerns together with recommended solutions.

8.1.10 MBE/WBE Compliance Monitoring (All Phases)

The Owner's Project Manager shall monitor and report on the Designer's and Contractor's compliance with MBE/WBE requirements.

8.1.11 Site Investigations and Environmental Testing

Prior to Designer Selection, the Owner's Project Manager shall assist the Town in determining the need for and the implementation of site evaluation and testing including, but not necessarily limited to, site surveys, wetlands evaluation, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects. The determination that any additional services or testing need to be performed shall rest with the Town or Designer.

8.1.12 Project Records and Reports (All Phases)

The Owner's Project Manager shall maintain a complete Project file including, but not necessarily limited to, a copy of the executed agreements of the Town-Owner's Project Manager, Town-Architect/Engineer and the Town-Contractor including copies of performance and payment bonds, a master list of permits, certificates of insurance, licenses and approvals for the Project, correspondence, daily reports, payment records, shop drawings, submittals, project schedules, requests for information, change orders/amendments, change directives and meeting minutes. The Owner's Project Manager shall assist the Town in responding to any public records request received by the Town.

8.2 Feasibility Study/Schematic Design Phase

8.2.1 Designer Selection

The Owner's Project Manager shall coordinate the designer selection process for the Town:

8.2.1.1 The Owner's Project Manager shall assist the Town in preparing the schedule for designer selection, advertisement, request for services, selection criteria and other materials required for the application package.

8.2.1.2 The Owner's Project Manager, in conjunction with the Town's Purchasing Office, shall respond to project specific questions. The Owner's Project Manager shall complete reference checks on all applicants and provide the Town with a report on the references.

8.2.1.3 The Owner's Project Manager shall review each submitted application to be sure it is complete.

8.2.1.4 The Owner's Project Manager shall assist the Town in the negotiation of the design contract with the first-ranked firm.

8.2.2 Design

The Owner's Project Manager shall monitor the activities and responsibilities of the Designer during this phase and assist the Town in the review of the proposed scope, schedule and budget,

developed by the Designer, including the review of the Designer's preliminary drawings. The Owner's Project Manager shall:

- a. Review Designer's cost estimates and, if required by the Town, prepare independent construction cost estimates as provided in to Section 8.1.2.2 of this Contract for comparison with the Designer's cost estimates.
- b. Work with the Town and Designer to prepare the Project Schedule.

8.2.2.1 The Owner's Project Manager shall review the design to recommend Value Engineering Changes (VEC) to the Town. A Value Engineering Change shall include an analysis of the constructability, cost, quality and schedule impact. The Designer will be responsible for a thorough review and recommendation on the technical merit of any VEC.

8.2.2.2 The Owner's Project Manager shall lead design coordination meeting between the Designer and the Town to provide for review and discussion of design/engineering related issues. The Owner's Project Manager shall provide technical assistance to the Town.

8.2.2.3 The Owner's Project Manager shall assist in the implementation of additional site evaluation and testing as required by the Designer, including, but not necessarily limited to, site surveys, wetlands evaluation, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects.

8.2.2.4 The Owner's Project Manager shall monitor the status of the Designer contract including monitoring the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the Town when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the Town are not being fulfilled.

8.2.2.5 The Owner's Project Manager shall meet with the Town, Designer and other project participants as necessary.

8.2.2.6 The Owner's Project Manager shall assist the Town with the completion of grant applications for funding for the study of green design strategies and assist by identifying green strategies, as appropriate, for study during this phase.

8.3 Change Order and Claims Administration

The Owner's Project Manager shall review and coordinate its review with the Designer and make specific document and processing recommendations to the Town, consistent with the General Laws and the construction contract documents, which minimize change order and claims processing costs and time. Services provided by the Owner's Project Manager shall include:

8.3.1 Change Order Administration

8.3.1.1 Review all Contractor proposals for change orders and supporting schedules for time extension requests. For change orders in excess of \$100,000, prepare independent cost estimate analysis with associated schedule impact.

8.3.1.2 Initiate, conduct, and document negotiations through a memorandum of negotiations with the

Contractor.

8.3.1.3 For all change order requests by the Contractor, make recommendations to the Town for acceptance or rejection.

8.3.1.4 Prepare and finalize any documentation required for processing change orders including documentation to support or reject the change.

8.3.1.5 Maintain a status report system for logging and tracking change orders, claims, and disputes to resolution. At a minimum, monthly reports shall include contract number, description of change order or claim, reason for change, date initiated, magnitude of estimated cost, actions required (identification of action parties and response dates) and status. This report shall be included in the Monthly Progress Report.

8.3.2 Claims and Disputes Management

8.3.2.1 Implement a claims management procedure consistent with the construction contract documents.

8.3.2.2 Analyze Contractor claims and propose recommendations to the Owner in support of the Town's obligations under the claims article of the construction contract documents. Prepare responsive positions in coordination with the Town, and obtain appropriate input from the Designer and/or Contractor.

8.3.2.3 In the event that a dispute arises between the Contractor, and/or any Subcontractors, and/or the Designer, including, but not necessarily limited to, disputes regarding the performance, quality, acceptability, fitness and rate of progress of the Project or the requirements of the Designer's contract or the Contractors' construction contract(s), the Owner's Project Manager shall report any such claims, disputes or other matters in question relating to the performance by the Contractor, Subcontractor, Designer or vendor to the Town in writing as soon as reasonably possible.

8.3.2.4 The Owner's Project Manager shall take all reasonable efforts designed to resolve any such claims, disputes, or other matters in question.

8.4 Construction Documents

8.4.1 The Owner's Project Manager shall review the construction documents for quality, cost, and schedule improvements, conciseness and clarity. The Owner's Project Manager shall:

- a. Review Designer's cost estimate pursuant to Section 8.1.2.2 of this Contract, (One estimate during Task 8.4)
- b. Provide advice, consultation and guidance to the Town relative to value engineering recommendations.
- c. Work with the Town and Designer to update the construction budget and schedule.

8.4.2 The Owner's Project Manager shall provide advice, consultation and guidance to the Town and the Designer relative to general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D½ and § 44D¾ as applicable, including participation as a member of the Owner's Prequalification Committee.

- 8.4.3 The Owner's Project Manager shall monitor and coordinate the schedule, technical accuracy, efficiency, coordination, and constructability of the Project and cost- effectiveness of all designs, drawings, reports, estimates and other work furnished by the Designer. The review of the construction documents shall include constructability, operability and bid-ability as well as document clarity and coordination between drawings and to identify conflicts between drawings and specification.
- 8.4.4 The Owner's Project Manager's review of the construction documents shall also include, but not be limited to, any concerns of the Owner's Project Manager and/or the Town relative to access, usable area, parking, utilities, anticipated noise sources during construction and identification of field offices, facilities, supplies and equipment.
- 8.4.5 The Owner's Project Manager shall coordinate the timely review of the construction documents by the Commissioning Consultant, if any, to determine that plans and specifications include the recommendations made in regard to materials selection, installation and testing criteria in regard to commissioning and start-up and provide adequate information and allow sufficient time for functional and system testing.
- 8.4.6 The Owner's Project Manager shall monitor the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the Town when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the Town are not being fulfilled.

8.5 Bidding Phase

- 8.5.1 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer in the advertisement, distribution of bidding documents and solicitation of public bids in accordance with M.G.L. c. 149 §§44A through 44J and other public construction-related statutes. The Owner's Project Manager shall:
- a. Administer general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D $\frac{1}{2}$ and § 44D $\frac{3}{4}$ as applicable, including participation as a member of the Owner's Prequalification Committee.
 - b. Attend, and assist the Town with, all pre-bid conferences and meetings and, assist, if directed by the Town.
 - c. Attend, and assist the Town with, all sub-bid and general bid openings and, assist, if directed by the Town.
 - d. Review all sub-bids and general bids in conjunction with Designer's determination of responsiveness, bidder eligibility, completeness, accuracy and price. Provide technical guidance to the Town relative to its acceptance of bids and determination of bidder responsibility.
 - e. Review alternates and make written recommendations as to their acceptance.
 - f. If the bid of the lowest eligible and responsible general bidder exceeds the construction budget, the Owner's Project Manager shall consult with the Designer and make recommendations to the Town in regard to maintaining the Project Budget which may include, consistent with Massachusetts public construction laws, reviewing and recommending acceptance of alternates, re- bidding or seeking additional funding from the Town.
- 8.5.2 The Owner's Project Manager shall make recommendations to the Town relative to the award of a construction contract.

- 8.5.3 The Owner's Project Manager shall assist the Town in the preparation and execution of the Owner-Contractor Agreement and shall obtain from the Contractor performance and payment bonds, insurance certificates, and all other documents and certificates required for contract execution.
- 8.5.4 The Owner's Project Manager shall assist the Town and the Designer in preparing and sending the Notice to Proceed to the Contractor.
- 8.5.5 The Owner's Project Manager shall provide the Contractor, Designer, and Town with required copies of executed construction contract documents.

Construction Phase

8.6 Construction

The Owner's Project Manager shall provide for each of the following activities, from Notice to Proceed of the construction contract to contract close-out for each Project.

- 8.6.1 The Owner's Project Manager shall monitor the Designer's administration of the Owner-Contractor Agreement including the processing of submittals, issuance of timely decisions and directives and consultant's or sub-consultants' visits to the Project as necessary during the time that construction is occurring on the portions of the work to which the consultant's services relate.
- 8.6.2 The Owner's Project Manager shall provide an on-site Project Representative.
- 8.6.2.1 The Project Representative shall be subject to the approval of the Town and the Town reserves the right to require the Owner's Project Manager to replace the Project Representative at any time during the course of the Project.
- 8.6.2.2 The Project Representative shall have at least five years experience in on-site supervision of projects similar in size and complexity to the Project.
- 8.6.2.3 Unless otherwise directed, the Project Representative shall be present at all times when the Contractor is conducting operations at the site starting from issuance by the Owner of a Notice to Proceed to the Contractor and continuing until substantial use or substantial completion as determined by the Town and thereafter on an, as needed basis, until issuance to the Contractor of a Certificate of Final Completion by the Town.
- 8.6.3 The Owner's Project Manager shall review the Contractor's schedule of values to determine if it represents a reasonably balanced payment schedule for work. The schedule of values shall include line items for all deliverables, testing requirements and specified operations and maintenance materials. The Owner's Project Manager shall submit recommendations for the Contractor's schedule of values to the Owner within forty-five days of the Owner's Notice to Proceed to the Contractor.
- 8.6.4 The Owner's Project Manager shall review the Contractor's submitted baseline schedule. The Owner's Project Manager shall be responsible for monitoring the timeliness of these submittals and enforcing compliance with schedule submittal requirements of the construction documents. The Owner's Project Manager shall evaluate the Contractor's planning for the execution of the work, evaluate the reasonableness of the proposed schedule and determine if the submitted schedule meets the requirements of the construction documents.

- 8.6.5 The Owner's Project Manager shall provide daily observation and monitoring of construction activities such that all shifts and work activities are observed and documented. Responsibilities shall include:
- 8.6.5.1 The Owner's Project Manager shall keep a daily log containing a record of weather, the Contractor's work on site, number of workers, visitors to the site, safety status of the Project, equipment and equipment utilization, material and equipment deliveries, non-compliance with safety procedures and issuance of any safety violation notifications, accidents, general description of work performed and quality of work, visits of code enforcement officials and any resulting reports or orders, verbal instruction to interpretations given to the Contractor, pay items, and any observed delays, deficiencies and field problems.
 - 8.6.5.2 The Owner's Project Manager shall prepare weekly progress reports for submittal to the Designer and the Town that summarize the progress achieved, provide a concise description of problems and include a copy of the daily log.
 - 8.6.5.3 The Owner's Project Manager shall assist the Designer in determining if construction and construction related activities are performed in accordance with plans and specifications and the approved shop drawings and are consistent with Massachusetts public construction laws.
 - 8.6.5.4 The Owner's Project Manager shall monitor on a daily basis Time and Materials work on change orders for less than \$50,000, including work installed, volume measurements, time sheets, crew sizes and mixes, and equipment utilized.
 - 8.6.5.5 The Owner's Project Manager shall evaluate actual quantities and classification of Unit Price work performed by Contractors.
 - 8.6.5.6 The Owner's Project Manager shall evaluate field problems, using the proper channels for solution and communication of the information to the Designer and the Town.
 - 8.6.5.7 The Owner's Project Manager shall coordinate and track requests for clarification on drawings/specifications design changes and proposed change orders.
 - 8.6.5.8 The Owner's Project Manager shall prepare responses to Contractor correspondence for the Town.
 - 8.6.5.9 The Owner's Project Manager shall monitor and coordinate the scheduling and activities of independent materials testing functions at the site, including distribution of reports and any necessary actions resulting.
 - 8.6.5.10 The Owner's Project Manager shall maintain at the Project site, on a current basis, a record copy of Construction Contract Documents, including, but not necessarily limited to, drawings, specifications, addenda, change orders, and directives as well as all approved shop drawings, product data, samples, submittals, operations and maintenance manuals and all other relevant documents relating to the construction of the Project.
 - 8.6.5.11 The Owner's Project Manager shall monitor the Contractor's compliance with federal Davis Bacon prevailing wage requirements and Massachusetts prevailing wage requirements pursuant to M.G.L. c. 149 §§26 to 27H, inclusive including assisting the Town in cataloging and filing payroll affidavits.

8.6.5.12 The Owner's Project Manager shall shoot and maintain Project progress photographs showing construction progress at a frequency sufficient to document major activities or to document safety incidents, differing site conditions and quality issues. The Owner's Project Manager shall maintain a descriptive log and captioning of the photographs on CD.

8.6.6 The Owner's Project Manager shall monitor the Contractor's compliance with the construction schedule, identify potential problems, include problem identification on the Monthly Progress Report and make recommendations to the Town when, in the opinion of the Owner's Project Manager, requirements of the Contractor in the Owner-Contractor Agreement are not being fulfilled.

8.6.7 The Owner's Project Manager shall schedule, conduct and prepare minutes of weekly job meetings on progress, coordination and problem resolution and negotiations. The Owner's Project Manager shall prepare and submit minutes to the Town within three business days of the meeting.

8.6.8 Intentionally omitted.

8.6.9 The Owner's Project Manager shall monitor, review and analyze proposed change orders, and claims recommending appropriate action and resolution to the Town in accordance with Article 8.1.4.

8.6.10 The Owner's Project Manager shall review and coordinate its review with the Designer to recommend approval of the General Contractor's monthly payment requisitions. The Owner's Project Manager shall review the Designer's certification that the percentage of work included in the requisition is accurate and the work performed conforms to the construction contract.

8.6.11 Intentionally omitted.

8.6.12 The Owner's Project Manager shall verify substantial completion of work; assist the Designer in the Designer's final inspection and receipt of documents, manuals, receipts, certifications, and all other materials required for final closeout as described in the construction contract. The Owner's Project Manager shall coordinate the detailed punch list with the Designer, including a subsequent walk-through with the Designer and the Authority's Commissioning Consultant.

The Owner's Project Manager and the Designer shall then coordinate a walk-through with the Town to finalize the punch list. The Owner's Project Manager shall then be responsible for tracking and confirming the completion of the punch list items.

8.7 Completion Phase

8.7.1 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer and the Contractor in the close-out and commissioning of the Project.

8.7.2 The Owner's Project Manager shall assist in securing and reviewing and recommending approval of all project completion forms and documentation necessary for occupancy and full operation of the facility including, but not necessarily limited to, inspection certificates of local building authorities, Certificate of Substantial Completion, Certificate of Final Completion, Occupancy Permit, shop drawings, as-built drawings, operations and maintenance manuals, warranties, guarantees and any and all documentation as required by the contract documents.

8.7.3 The Owner's Project Manager shall assist the Town in completing the written evaluation of the Designer(s) pursuant to Massachusetts General Laws and prepare, sign and provide to the Town for its

signature the written evaluation of the Contractor(s) and Trade Subcontractors pursuant to M.G.L. c. 149 § 44D.

ARTICLE 9: EXTRA SERVICES

9.1 General

9.1.1 Extra Services are those services requested by the Town to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Extra services shall not be deemed authorized until a written Approval is received from the Town and funds have been formally encumbered.

9.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented to and approved by the Town in writing prior to the performance of any Extra Services.

9.1.3 Cost proposals for Extra Services shall be computed in accordance with the Hourly Rate Schedule established in Attachment A.

9.2 Unless specifically prohibited elsewhere and with the prior written Approval of the Town, the Owner's Project Manager shall perform any of the following services as Extra Services:

9.2.1 Preparing special studies, reports, or applications at the written direction of the Town, other than those specifically required herein as part of Basic Services;

9.2.2 Assisting in the appeals process of permitting boards or commissions;

9.2.3 Rebidding, re-solicitation, or re-advertising for bids, proposals, or qualifications unless made necessary by the fault of the Owner's Project Manager, in which events such rebidding shall be deemed part of Basic Services, and subject to the limitation in Article 7.2;

9.2.4 Furnishing services in connection with a bid protest filed in court or with the Office of the Attorney General, provided such activities did not arise due to the fault of the Owner's Project Manager;

9.2.5 Furnishing services in excess of Basic Services made necessary by the termination of the General Contractor;

9.2.6 Providing consultation with respect to replacement of work damaged by fire or other casualty during construction;

9.2.7 Assisting the Town in litigation, claims resolution or non-binding mediation arising out of the Designer contract or the construction contract, provided such litigation or claims did not arise due to the fault of the Owner's Project Manager; and

9.2.8 Providing other services requested by the Town that are not included as Basic Services pursuant to this Contract.

9.3 Invoices for Extra Services shall be accompanied by a complete breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of Extra Services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment A.

ARTICLE 10: REIMBURSABLE EXPENSES

10.1 For coordination and responsibility for the work described in the following paragraphs 10.1.1 and 10.1.2, the Owner's Project Manager shall be reimbursed its actual costs and those of its Sub-consultants, supported by invoices or receipts, plus (Percent to be negotiated). The following are reimbursable expenses:

10.1.1 Certain out of pocket expenses paid by the Owner's Project Manager such as filing fees, and permit fees that are normally paid by the Town; travel to fabrication or manufacturing locations to identify completed, identified, and stored materials or equipment specifically for the Project; field office furnishings.

10.1.2 Any other specially authorized reimbursement deemed essential by the Town, in the Town's sole discretion, in writing.

10.2 Non-Reimbursable Items: The Town shall not reimburse the Owner's Project Manager or its Sub-consultants for travel expenses, sustenance, telephone, facsimiles, electronic mails, postage and delivery expenses, unless specifically required elsewhere in this Contract.

10.3 The Owner's Project Manager shall not be entitled to compensation under this Article for the services of Sub-consultants hired to perform Basic Services under this Contract. If a Sub-consultant hired to perform Basic Services performs Extra Services approved by the Town, compensation for such Extra Services shall be made under Article 9.

ARTICLE 11: RELEASE AND DISCHARGE

11.1 The acceptance by the Owner's Project Manager of the last payment under the provisions of Article 7 or Article 12 in the event of termination of the Contract, shall in each instance, operate as and be a release to the Town and their employees and agents, from all claims of the Owner's Project Manager and its Sub-consultants for payment for services performed and/or furnished, except for those written claims submitted by the Owner's Project Manager to the Town with, or prior to, the last invoice.

ARTICLE 12: ASSIGNMENT, SUSPENSION, TERMINATION

12.1 Assignment:

The Owner's Project Manager shall not assign or transfer any part of its services or obligations under this Contract (other than as specified in Article 5), without the prior written approval of the Town. Likewise, any successor to the Owner's Project Manager must first be approved by the Town before performing any services under this Contract. Such written consent shall not in any way relieve the Owner's Project Manager or its assignee from its responsibilities under this Contract.

12.2 Suspension

The Town may, at any time, upon seven (7) days written notice to the Owner's Project Manager, suspend this Contract. If the Town provides such written notice, the Owner's Project Manager shall be compensated for work satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension for which invoices have been properly submitted.

12.3 Termination

By written notice to the Owner's Project Manager, the Town may terminate this Contract at any time with or without cause. If such termination shall occur through no fault of the Owner's Project Manager, all compensation and reimbursement due to the Owner's Project Manager in accordance with the Contract terms, for work satisfactorily performed up to the date of termination, including proportionate payment for portions of the work started but incomplete at the time of termination, shall be paid to the Owner's Project Manager, provided no payment shall be made for work not yet performed or for anticipated profit on unperformed work. If such termination is for cause then no further payment shall be due to the Owner's Project Manager beyond the date of termination.

ARTICLE 13: NOTICES

13.1 Any notice required to be given by the Town to the Owner's Project Manager, or by the Owner's Project Manager to the Town, shall be deemed to have been so given, whether or not received, if mailed by certified or registered mail to the Owner's Project Manager or the Town at the addresses indicated on page one.

ARTICLE 14: INDEMNIFICATION OF OWNER AND AUTHORITY

- 14.1 With respect to professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Town, and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Town to the extent caused by the negligence of or the breach of any of the provisions of this Contract by the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Sub-consultants.
- 14.2 For all other claims, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Town, and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Town arising out of or resulting from the performance of its services provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are attributable to bodily injury or death or injury to or destruction of tangible property caused by an act or omission of the Owner's Project Manager, a person employed by the Owner's Project Manager, or any person or Sub-consultants for whom the Owner's Property Manager is responsible under this Contract.
- 14.3 The indemnification obligation in this Article shall be in addition to, and not a limitation of, any other rights and remedies available to the Town under this Contract or at law.

ARTICLE 15: INSURANCE

- 15.1 The Owner's Project Manager shall obtain and maintain at its sole expense all insurance required by law and as may be required by the Town under the terms of this Contract. The insurance required hereunder shall be provided at the sole expense of the Owner's Project Manager or its Sub-consultant, as the case may be, and shall be in full force and effect for the full term of this Contract between the Town and the Owner's Project Manager or for such longer period as otherwise required under this Contract.
- 15.2 All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of "A" or better as assigned by A.M.

Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Town.

- 15.3 The Owner's Project Manager and its sub-consultants, shall submit to the Town original certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The Owner's Project Manager shall submit updated certificates to the Town prior to the expiration of any of the policies referenced in the certificates so that the Town shall at all times possess certificates indicating current coverage. Failure by the Owner's Project Manager to obtain and maintain the insurance required by this Section, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Contract and shall be just cause for termination of the services of the Owner's Project Manager under this Contract.
- 15.4 Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Town at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- 15.5 The Owner's Project Manager shall require by contractual obligation, and shall ensure by the exercise of due diligence, that any Sub-consultant hired in connection with the services to be provided under this Contract shall obtain and maintain all insurance required by law and as may be required by the Town under the terms of this Contract.
- 15.6 The Owner's Project Manager or its Sub-consultant, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required by this Contract. The Town shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- 15.7 Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers

The Owner's Project Manager shall purchase and maintain at its own expense during the life of this Contract, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:

- 15.7.1 Workers' Compensation Insurance in accordance with MGL c152. The policy shall be endorsed to waive the insurer's rights of subrogation against the Town.
- 15.7.2 Commercial General Liability Insurance (including Premises/Operations; Products/ Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate. The Owner's Project Manager shall maintain such insurance in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the Town. The Town shall be added as an additional insured on this policy. The policy shall be endorsed to waive the insurer's rights of subrogation against the Town.
- 15.7.3 Comprehensive Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than:
\$1,000,000 Each Person for Bodily Injury;
\$1,000,000 Each Accident for Bodily Injury; and
\$1,000,000 Each Accident for Property Damage.
- 15.7.4 Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Contract or by the

Agreement between the Town and the Designer in the event of loss or destruction while in the custody of the Owner's Project Manager until the final fee payment is made or all data is turned over to the Town, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.

15.8 Professional Liability

The Owner's Project Manager shall maintain professional liability insurance covering errors and omissions and negligent acts of the Owner's Project Manager and of any person or entity for whose performance the Owner's Project Manager is legally liable at all times while services are being performed under this Contract. Certificates of professional liability insurance evidencing such coverage shall be provided to the Town on or before the effective date of this Contract and for a period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Town; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor of a final pay estimate prepared by the Town pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Construction Contract and the taking of possession of the Project for occupancy by the Town. The certificates shall indicate a retroactive date that is no later than the effective date of this Contract and a limit of not less than \$1,000,000.

In the event that the Town terminates this Contract at or before the completion of the Design Phase "without cause" as provided in Article 12.3.1; or the Contract term ends pursuant to its own provisions at the completion of the Design Phase and the Contract is not amended to authorize the Owner's Project Manager to perform services for subsequent design phases, Construction Phases and/or Completion Phase; or the Town otherwise elects not to proceed with the Project beyond the Design Phase, either because the Town lacks sufficient funding for the Project or for any other reason, the Town may, amend this Article 15.8.

15.9 Liability of the Owner's Project Manager

Insufficient insurance shall not release the Owner's Project Manager from any liability for breach of its obligations under this Contract. Without limitation, the Owner's Project Manager shall bear the risk of any loss if its' valuable papers insurance coverage is insufficient to cover the loss of any work product covered by this Contract.

ARTICLE 16: OWNERSHIP OF DOCUMENTS

16.1 Unless provided otherwise by law, ownership and possession of all information, data, reports, studies, designs, drawings, specifications, materials, documents, models, and any other documentation, product or tangible materials authored or prepared, in whole or in part, or purchased, obtained, created by the Owner's Project Manager pursuant to this Contract (collectively, the "Materials"), other than the Owner's Project Manager's administrative communications, records, and files relating to this Contract, shall be the sole property of, and shall vest in, the Town as "works made for hire" or otherwise. The Town will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Owner's Project Manager pursuant to this Contract, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the Town shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Owner's Project Manager. At the completion or termination of the Owner's Project Manager's services, all original Materials shall be promptly turned over to the Town.

ARTICLE 17: REGULATORY AND STATUTORY REQUIREMENTS

- 17.1 Truth-in-Negotiations Certificate: If the Owner's Project Manager's fee is negotiated, by signing this Contract, the Owner's Project Manager hereby certifies to the following:
- 17.1.1 Wage rates and other costs used to support the Owner's Project Manager's compensation are accurate, complete, and current at the time of contracting; and
- 17.1.2 The Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Town determines that the fee was increased by such amounts due to inaccurate, incomplete or non-current wage rates or other costs.
- 17.2 The person signing this Contract certifies, as a principal or director of the Owner's Project Manager, that the Owner's Project Manager has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Contract; no consultant to or Sub-consultant for the Owner's Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner's Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Owner's Project Manager or Sub-consultant of a contract by the Owner's Project Manager; and no person, corporation or other entity, other than a bona fide full-time employee of the Owner's Project Manager, has been retained or hired by the Owner's Project Manager to solicit for or in any way assist the Owner's Project Manager in obtaining this Contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Contract .
- 17.3 Revenue Enforcement and Protection Program (REAP): Pursuant to Massachusetts General Laws, Chapter 62C, §49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the Owner's Project Manager and the principals thereof are in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 17.4 Interest of Owner's Project Manager: The Owner's Project Manager hereby certifies that it is in compliance with the provisions of General Laws Chapter 268A whenever applicable. The Owner's Project Manager covenants that 1) he/she presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Contract or which would violate M.G.L. Chapter 268A, as amended from time-to-time; 2) in the performance of this Contract, no person having any such interest shall be employed by the Owner's Project Manager; and 3) no partner or employee of the firm is related by blood or marriage to any officer, official, or employee of the Town, unless approved by the State Ethics Commission.
- 17.5 Equal Opportunity: The Owner's Project Manager shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs. The Owner's Project Manager shall comply with all provisions of Title VI of the Civil Rights Act of 1964 and M.G.L c.151B.
- 17.6 Certification of Non-Collusion: The Owner's Project Manager certifies under penalties of perjury that its proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- 17.7 Governing Law: This Contract shall be governed by the laws of the Commonwealth of Massachusetts.

17.8 Venue: Any suit by either party arising under this Contract shall be brought only in a court of competent jurisdiction in the county where the Project is located. The parties hereto waive any argument that this venue is improper or that the forum is inconvenient.

MANAGER CERTIFICATE

Limited Liability Company

The undersigned certifies that s/he is the manager of PMA CONSULTANTS LLC under a Certificate of Formation and recorded with the Commonwealth of Massachusetts (the "Manager") and further certifies that the following actions have been duly authorized and directed by 100% of the members under the PMA CONSULTANTS LLC as follows:

1. That s/he is authorized, empowered and directed,, acting singly, to execute a contract with TOWN OF ANDOVER, MA.. The execution of this contract shall be conclusive evidence of such approval.

2. That s/he is further authorized, empowered and directed, acting singly, to take such other actions and to execute and to deliver such further documents as, in his/her sole discretion, s/he shall deem necessary or appropriate to effectuate the transaction described above, with the signature of said Manager appearing upon such documents to be conclusive evidence that the execution of each such document is within the powers of the Manager and the purposes of the Manager, that it has been authorized and directed by all necessary action of the members of PMA CONSULTANTS LLC, and that it is binding.

The undersigned further certifies that the PMA CONSULTANTS LLC has not been altered, amended or rescinded since its date of establishment; that it continues in full force and effect; and that the foregoing statements are true and correct, all as of the date hereof.

Witness the execution hereof under seal of this 1st day of JUNE, 20 22.

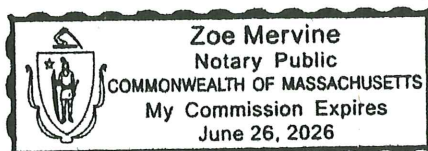
By: [Signature]
Manager

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 2nd day of June, 2022, before me, the undersigned notary public, personally appeared Stephen Rustika, Manager as aforesaid and proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

[Signature]
Notary Public
My Commission Expires:



CERTIFICATION OF GOOD FAITH & NON-COLLUSION

The undersigned certifies under pains and penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Stephen F. Rusteika Jr.
Signature of authorized individual submitting bid/proposal

STEPHEN F. RUSTEIKA JR.
Printed Name

PMA CONSULTANTS LLC
Name of Business (if applicable)

438-3327768
Social Security or Federal Tax Identification Number

PAYMENT SCHEDULE

In consideration of Owner’s Project Manager's delivery of Basic Services, the Town shall pay the Owner’s Project Manager on an hourly basis, up to a total fee that shall not exceed **\$150,000.00**. The **\$150,000** fee is a cap for Basic Services related to this Contract, and the actual amount paid by the Town for Basic Services required during the duration of this Contract may be an amount less than **\$150,000**. The Owner’s Project Manager shall invoice the Town based on hours worked pursuant to this Contract, according to the hourly rates below and the schedule set forth below. During the course of this Contract, the rates in effect shall not be increased above those delineated in the following table:

Hourly Rate Schedule

<u>Title</u>		<u>Rate/Hour</u>
• Project Executive	Steve Rusteika	\$279.00/hour
• Project Director	Brian DeFilippis	\$178.00/hour
• Project Manager	Karina Pena	\$118.00/hour

The Owner’s Project Manager shall perform the Services in accordance with the following Schedule:

<u>Project Phase/Item of Work</u>	<u>Not-to-Exceed Fee</u>	<u>Completion Date</u>
Document/Bidding Phase	\$14,500	7/31/2022 * Estimated
Construction Phase/Final Completion	\$35,500	2/28/2023 * Estimated
Extra Services (Identify by Category)	N/A	
Reimbursable Services (Identify by Category)	N/A	

Independent Cost Estimates

Task 8.2.2	N/A
Task 8.4.2	N/A

