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TOWN OF ANDOVER

CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

DATE: Aug 10, 2023

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

BSC Group
300 Brickstone Square; Suite 203
Andover, MA 01810
617-896-4300

1. This is a Contract for the procurement of the following: **Land Survey and Civil Engineering Services relative to the design and construction of proposed improvements to the Haggett's Pond Trail and the connecting trail out to Bellevue Road in Andover.**
2. The Contract price to be paid to the Contractor by the Town of Andover is: **\$148,000.00 per attached BSC Scope of work and Price Proposal. Terms and Conditions of the Town Contract for Professional Engineering Services apply.**
3. Payment will be made as follows: Within 30 days of detailed invoice.
4. Definitions:
 - 4.1 Acceptance: All Contracts require proper acceptance of the described deliverables or services by the Town of Andover. Proper acceptance shall be understood to include inspection of deliverables and certification of acceptable performance for services by authorized representatives of the Town to ensure that the deliverables or services are complete and are as specified in the Contract.
 - 4.2 Contract Documents: All documents relative to the Contract including (where used) Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, Request for Qualifications, Scope of Services, and all Addenda. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of this Contract is

to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

- 4.3 The Contractor: The “other party” to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term “Contractor” shall be understood to refer to any other such label used. In the performance of service under this Agreement, the Contractor acts at all times as an independent contractor. There is no relationship of employment or agency between the Town, on the one hand, and the Contractor on the other, and neither party shall have or exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this Contract which the parties view as consistent with their independent contractor relationship.
- 4.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract documents, as modified by approved Amendments and Change Orders.
- 4.5 Goods: Goods, Supplies, Materials or other Deliverables.
- 4.6 SubContractor: Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.
- 4.7 Work: The services or materials contracted for, or both.

5. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before May 31, 2024 in its entirety inclusive of additional tasks, unless extended pursuant to a provision for extension contained in the Contract documents at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the Town Accountant. The time limits stated in the Contract documents are of the essence of the Contract.

6. Subject to Appropriation:

Notwithstanding anything in the Contract documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. In the absence of appropriation, this Contract shall be immediately terminated without liability for damages, penalties or other charges. When the amount of the Accountant’s certification of available funds is less than the face amount of the Contract, the Town shall not be liable for any claims or requests for payment

by the Contractor which would cause total claims or payments under this Contract to exceed the amount so certified.

7. Permits and Approvals:

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.

8. Termination:

a. Without Cause. The Town may terminate this Contract on seven (7) calendar days notice when in the best interests of the Town by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.

b. For Cause. If the Contractor is determined by the Town to be in default of any term or condition of Contract, the Town may terminate this Contract on seven (7) days notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.

c. Default. The following shall constitute events of a default under the Contract:

- 1) any material misrepresentation made by the Contractor to the Town; 2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the Town, (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (v) discontinuance of the services for reasons not beyond the Contractor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of federal and/or state law and/or regulations, and Town bylaw and/or regulations.

9. The Contractor's Breach and the Town's Remedies:

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and the Town of Andover shall have all the rights and remedies provided in the Contract documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above.

From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and damages incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

10. Statutory Compliance:

10.1 This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of General Laws are incorporated by reference into this Contract, including, but not limited to, the following:

General Laws Chapter 30B – Procurement of Goods and Services.

General Laws Chapter 30, Sec. 39, *et seq.* - Public Works Contracts.

General Laws Chapter 149, Section 44A, *et seq.* Public Buildings Contracts.

General Laws Chapter 7, Sections 38A ½ - O: Designer Selection

10.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and Towns, such law or regulation shall control.

10.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the Contract. If the Contractor performs the Contract in violation of any applicable law or regulation, the Contractor shall bear all costs arising therefrom.

10.4 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal By-laws and Regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work or in any way affecting the conduct of the work. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of

any such law, by-law, regulation, order or decree, the Contractor shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Town of Andover, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree.

- 10.5 Any changes to the Scope of Services or contract price shall be made only by a written contract amendment executed by the Town and the Contractor.

11. Conflict of Interest:

Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

12. Certification of Tax Compliance

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

13. Discrimination

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.

14. Assignment:

Assignment of this Contract is prohibited, unless and only to the extent that assignment is provided for expressly in the Contract documents.

15. Condition of Enforceability Against the Town:

This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Town Manager or its designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

16. Corporate Contractor:

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the Town of Andover unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall comply with the provisions of the General Laws, Chapter 181, Section 3, and any Acts and Amendments thereof, and in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

17. Liability of Public Officials:

To the full extent permitted by law, no official, employee, agent or representative of the Town of Andover shall be individually or personally liable on any obligation of the Town under this Contract.

18. Indemnification:

The Contractor shall indemnify, defend, and save harmless the Town, the Town's officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) incurred by, brought or recovered against them that may arise in whole or in part out of or in connection with

the services being performed or to be performed, and out of any negligent act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this contract. The duty to defend shall immediately accrue and be owing upon the utterance of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact at trial. The duty to defend shall be absolute and will include and shall not be defeated or in any way undermined by the utterance of claims not covered by this Contract.

19. Documents, Materials, Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law. The Contractor shall comply with the provisions Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

A hard copy and an electronic copy (if requested by the Town) of Contractor's drawings, plans, specifications and other similar documents, whether in written, graphic or electronic form, shall be delivered to the Town. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

The Town shall have unlimited rights, for the benefit of the Town, in all drawings, designs, specifications, notes and other work developed in the performance of this contract including the right to use same on any other Town projects without additional cost to the Town; and with respect thereto the Contractor agrees and hereby grants to the Town an irrevocable royalty-free license to all such data which the Contractor may cover by copyright and to all designs as to which it may assert any rights or establish any claim under any patent or copyright laws. The Contractor shall not be responsible for changes made in the documents by others without the Contractor's authorization, nor for the Town's use of the document on projects other than the project which is the subject of this Contract, unless this is a contract for design services for a master plan or prototype.

20. Confidentiality

The Contractor shall comply with M.G.L. ch. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Town data in the Contractor's possession, or used by the Contractor in the performance of this Contract, which shall include, but is not limited to the Town's public records, documents, files, software, equipment or systems.

21. Record-Keeping and Retention, Inspection of Records

The Contractor shall maintain records, books, files and other data as specified in this Contract and in such detail as shall properly substantiate claims for payment under this Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under this Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. The Town shall have access during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

22. Subcontracting By Contractor

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under this Contract must be in writing, authorized in advance by the Town and shall be consistent with and subject to the provisions of this Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under this Contract. The Town is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

23. Risk of Loss

The Contractor shall bear the risk of loss for any Contractor materials used for this Contract and for all deliveries, Town personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of this Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Town.

24. Minimum Wage/Prevailing Wage

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, *et seq.* (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commission of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, 26 to 27D (Prevailing Wage Law), as shall be in force and as amended. The Contractor will, in addition to any other submissions required by the Prevailing Wage Law, submit certified weekly payrolls to the Town with the information described in General Laws Chapter 149, §27B.

25. Audit, Inspection and Recordkeeping

At any time during normal business hours, and as often as the Town may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcript all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

26. Payment

The Town agrees to make all reasonable efforts to pay to the Contractor the sum set forth in the Contractor's bid or proposal within thirty (30) days of receipt of an invoice detailing the work completed and acceptance from the Town of the work completed.

27. Waiver and Amendment

Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written Agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

28. Forum and Choice of Law

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

29. Notices

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the

Contractor shall be deemed sufficient if sent to the address set forth in the Contract and to the Town of Andover by being sent to the Town Manager, Town Hall, 36 Bartlet Street, Andover, Massachusetts 01810.

30. Binding on Successors:

This Contract shall be binding upon the Contractor, its assigns, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

31. Complete Contract:

This instrument, together with its endorsed supplements, and the other components of the contract documents, constitutes the entire contract between the parties, with no agreements other than those incorporated herein.

32. Contractor Certifications

32.1 By signing this contract, the Contractor certifies under the penalties of perjury that pursuant to General Laws Chapter 62C sec. 49A, the Contractor has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes; and that pursuant to General Laws Chapter 151A, sec. 19A, the Contractor has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions.

32.2 By signing this contract, the Contractor certifies under the penalties of perjury that this contract has been obtained in good faith and without collusion or fraud with any other person. As such in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, client or other organization, entity or group of individuals.

32.3 Qualifications. The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract, that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability, and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

32.4 Business Ethics and Fraud, Waste and Abuse Prevention. The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

32.5 Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or

regulations including, Executive Order 147, M.G.L. ch. 29, §29F, M.G.L. ch. 30, §39R, M.G.L. ch. 149, §27C, M.G.L. ch. 149, §44C, M.G.L. ch. 149, §148B and M.G.L. ch. 152, §25C.

33. Contract Amendments:

Any change in the scope of services or contract price shall be made only by a written contract amendment executed by the Town and the Contractor.

34. Minimum Wage:

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, *et seq.* (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

35. Insurance:

The Contractor shall obtain and maintain the following insurance:

- 35.1 Workers Compensation Insurance of the scope and amount required by the laws of the Commonwealth of Massachusetts.
- 35.2 Broad Form Commercial General Liability insurance with limits of at least \$1 Million per occurrence and \$2 Million aggregate, or such higher amount as the Town may require, and which shall cover bodily injury, death, or property damage arising out of the work.
- 35.3 Automobile Liability Insurance, including coverage for owned, hired or borrowed vehicles with limits of at least \$1 Million each person/each occurrence or a combined single limit of \$1 Million.
- 35.4 Professional Liability Insurance covering errors, omissions and acts of the Contractor or of any person or business entity for whose performance the Contractor is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal one million dollars or such larger amounts as the Town may require for the applicable period of limitations, which coverage shall be maintained for a period of at least three (3) years after the date of the final payment by the Town. The Contractor shall obtain such insurance coverage at its own expense and provide certificates of insurance to the Town at least 7 days prior to the execution of the Contract by the Town.
- 35.5 The intent of the Contract provisions regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain

insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work.

- 35.6 All required insurance shall be certified by a duly authorized representative of the insurers on the Certificate of Insurance form incorporated into and made a part of this Agreement. Properly executed certificates and endorsements acceptable to the Town signifying adequate coverage in effect in accordance with the requirements of this contract for the duration of the contract must be submitted to the Town at least 7 days prior to execution of this Contract by the Town with renewal certificates and endorsements issued not less than 30 days prior to expiration of a policy period. The Contractor shall submit certified copies of all policies to the Town within 7 days of such a request. All insurance companies shall be authorized by the Massachusetts Commissioner of Insurance to do business in the Commonwealth of Massachusetts.
- 35.7 The Town and its employees and officials shall be named as an additional insured on the above- referenced liability policies with the exception of the Professional Liability policy and the Contractor's insurance coverage shall be primary and non-contributory with respect to any other coverage available to additional insureds. The certificate of insurance shall so state the foregoing. The cost of such insurance, including required endorsements or amendments, shall be the sole responsibility of the Contractor.
- 35.8 The above referenced Liability policies (General Liability, Auto Liability, and Workers Compensation) shall include a Waiver of Subrogation endorsement in favor of the Town. The certificate of insurance shall so state the foregoing.
- 35.9 The General Liability and Automobile Liability shall be written on an occurrence basis.
- 35.10 The Contractor shall maintain all required insurance in full force and effect as required by this Contract or the Contractor shall be in material breach hereof.
- 35.11 Coverages are to be maintained for a period of 3 years after final payment.
- 35.12 Contractual liability must recognize the indemnity contained in this Agreement.

IN WITNESS WHEREOF the parties have hereto and to two other identical instruments set forth their hands the day and year first above written.

THE TOWN

THE CONTRACTOR

James Nigro 8/2/23
Division/Department Head Date

BSC Group, Inc.
Company Name

[Signature] 8/10/23
Town Manager Date

[Signature] 7/11/23
Signature Date

Theresa Reynolds 8/1/23
Purchasing Agent Date

DAVID BIANCAVILLA
VICE PRESIDENT
Print Name & Title

APPROVED AS TO FORM:

[Signature] 8/7/2023
Town Counsel Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

[Signature] 8/10/23
Town Accountant Date

ALPA Funds 502308-5700

CORPORATE VOTE

At a duly authorized meeting of the Board of Directors of BSC Group, Inc. held on July 13, 2022 at which all the Directors were present or waived notice, it was voted that David P. Biancavilla of this company, be and he hereby is authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract or obligation in this company's name on its behalf by David P. Biancavilla, shall be binding upon this company.



A TRUE COPY ATTEST:

Michael P. Cook
Assistant Clerk,

Date of this Contract

I hereby certify that I am the Assistant Clerk of BSC Group, Inc., that David P. Biancavilla is duly elected Vice President of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

Michael P. Cook
Assistant Clerk Corporate Seal

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____,

Notary Public

If a corporation, complete above or attach to each signed copy of the bid/written request/quotation, a notarized copy of vote of corporation authorizing the signatory to sign this bid/written request/quotation form. If attesting clerk is the same person as the individual executing this contract, have signature notarized above.

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

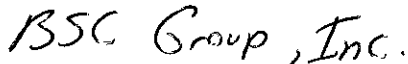
Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.



Signature of authorized individual submitting bid/proposal



Printed Name



Name of Business (if applicable)



Social Security or Federal Tax Identification Number

APRIL 24, 2023

www.bscgroup.com

REVISED JUNE 9, 2023

Janet Nicosia, CEM MCPPO
Director of Facilities
Town of Andover
5 Campanelli Drive
Andover, MA 01810

RE: Haggett's Pond Rail Trail Consulting Proposal
Andover, MA

Dear Janet,

BSC Group, Inc. (BSC) is pleased to submit this revised proposal for Land Survey and Civil Engineering Services relative to the design and construction of the proposed improvements to the Haggett's Pond Rail Trail and the connecting trail out to Bellevue Road in the Town of Andover, Massachusetts. The proposed services shall include survey, wetland delineations, design, permitting, preparation of construction documents, bidding assistance and construction phase services to support the proposed improvements.

BSC has prepared this proposal based upon the following understanding of your needs and circumstances that have affected the scope of services:

- The Town wishes to improve and provide accessible access to the existing rail trail from Bellevue Road to High Plain Road approximately 1.60 miles. Additionally, the Town wishes to add a small accessible spur off of the Haggett's Pond portion of the rail trail for a look out over Haggett's Pond. The accessible design will include improving the existing parking areas on Haggett's Pond Road, adding additional parking on the trail side of Haggett's Pond Road, Bellevue Road, and High Plain Road. The proposed rail trail is to be a combination of asphalt and boardwalks for the trail surface. All improvements will meet the accessibility requirements required for this project.
- The improvements are located within the buffer zones to wetland resource areas, and potentially within the 100-year flood zone. As such, a Notice of Intent will be required to be submitted to the Andover Conservation Commission for approval of the work within their jurisdiction.
- The Town has recently applied for a grant to fund the construction of the project. The Town intends to construct the project as funds are available. It's noted that a portion of the Haggett's Pond Rail Trail is required be completed prior to May 31, 2024 to meet the potential funding requirements associated with the potential Grant.
- The project area appears to be greater than 43,560 sf, and thus will require a Stormwater Management Permit. It is our understanding and experience that this can be approved by the Conservation Commission during the Notice of Intent process, and we do not need separate Planning Board approval.
- The site is located in the Watershed Protection Overlay District. Our understanding is that the improvements are Permitted in the Zoning By-Laws as an outdoor recreation use and will be required

to meet the design standards set forth in Section 8.1.7 of the Andover Zoning By-Laws. This will require a Sedimentation Control Plan and a Re-vegetation Plan to be approved by the Andover Planning Board as part of the permitting efforts.

- The proposed Improvements will be subject to the Massachusetts Stormwater Standards. As such, stormwater attenuation, treatment and infiltration will be required as part of the proposed improvements. Calculations and mitigation measures will be detailed in a Stormwater Management Report to be prepared for the project.
- A portion of the project appears to be located with the 100-year flood zone. Any filling of any kind will need to be mitigated with compensatory flood storage to replicate any flood storage lost.

BSC, the *Company*, proposes to provide to the Town of Andover, the *Client*, the following specific services in accordance with the Town of Andover Contract for Professional Engineering Services that is made a part of this Agreement.

1.0 SCOPE OF SERVICES

The following services will be performed as part of this Agreement:

1.1 WETLAND RESOURCE AREA DELINEATIONS

At project initiation, BSC will conduct a desktop review of available data such as USGS topographic maps, Federal Emergency Management Agency (FEMA) maps, NRCS Soil Survey maps and any other applicable mapping to assist in the identification of jurisdictional wetland resource areas on the Project Site.

In the field, BSC wetland scientists will delineate jurisdictional wetland resource areas on the subject parcel in accordance with the Massachusetts Wetlands Protection Act (WPA) and its implementing regulations (310 CMR 10.00) and the Town of Andover Wetland Protection By-law (Article XIV) and its implementing regulations. BSC will use soils, vegetation, and hydrology consistent with the Massachusetts Department of Environmental Protection (DEP) Massachusetts Handbook for Delineation of Bordering Vegetated Wetland (2022) to confirm the extent and type of wetland resource areas on the Site and will identify off-site jurisdictional resources within 100 feet of the Site whose buffer zones extent onto the Site. We will also confirm that the delineation generally meets the definition of wetlands as defined by the U.S. Army Corps of Engineers (USACOE) Clean Water Act Section 404.

Bordering Vegetated Wetland boundaries will be sequentially flagged with surveyor's tape in the field to demarcate the resources and establish the associated 100-foot Buffer Zone on plans. Flagging will be GPS-located with sub-meter accuracy at the time of delineation. Field collected wetland delineation data will be provided to BSC Survey staff for inclusion in Existing Conditions plans. GPS-located wetland flags are suitable for permit applications under state and local wetlands regulations but must be verified through the filing of an Abbreviated Notice of Resource Area Delineation or Notice of Intent within three years of the delineation being conducted.

BSC will take notes characterizing the community type, dominant species, and hydrologic regime and perform the analysis necessary to complete representative Wetland Field Data Forms that are compatible with both state and federal requirements. BSC will also take representative site photographs for inclusion with any permit applications that may be required.

BSC assigns a lead Wetland Scientist and Project Scientist to conduct delineations. Based upon a preliminary desktop evaluation of the site, BSC estimates that the delineation for the Site will require three (3) field days. Unexpected Site conditions can extend the time required to accomplish wetland delineations, which may affect the fee for this service.

1.2 EXISTING CONDITIONS SURVEY

BSC will perform research at the Town of Andover Assessors and Public Works Departments, Land Court, and the Essex County Registry of Deeds for records required to establish the locus boundary lines and obtain utility information. BSC will also perform research with the utility agencies providing utility service to

the site. The Mass State Plane will be used for the horizontal datum and the North American Vertical Datum of 1988 will be used for the vertical datum.

BSC will perform reconnaissance to recover boundary and street line monumentation. BSC will perform an on-the-ground survey to establish survey control to tie the boundary lines with the topographic survey. The field survey will also include planimetric detail such as buildings, parking lots, curbs, fences, trees and shrubs, of the proposed parking lot areas at Bellevue RD, Haggetts Pond Rd, and at High Plain Road, as well as the crossing at route 133 (Lowell St). The field survey will also include the location of the walking path from Haggetts Pond Rd to the lookout. The topography of the area will be supplemented with LIDAR and compared to on the ground recordings of elevation along the path. Utility structures where visible, as well as pipe inverts, diameters, and materials on gravity systems (drain and sewer), where accessible, will be shown. The following is a summary of the surveying extends to be provided to support the trail improvements.

- Parking area at High Plain Road – On the ground survey of the existing conditions and topography along with a limited boundary survey to determine the limits of the parking area potential.
- Haggett's Pond Rail Trail Look out Spur – On the ground survey of existing conditions and topography to support the proposed spur off the main trail. This includes the existing rail trail location and significant trees on either side of the existing trail spur.
- Existing Parking at Haggett's Pond – On the ground survey of the existing conditions for both sides of Haggett's Pond Road including significant trees and topography along with a limited boundary survey to determine the limits of the parking area potential. Additionally, a portion of Haggett's Pond Road will be surveyed to support the trail crossing.
- Existing trail connection at Bellevue Road – On the ground survey of the existing conditions and topography along with limited boundary survey to determine the limits of the parking area potential.
- All remaining trail locations will utilize existing GIS and LIDAR data compiled to form an existing conditions plan suitable for designing, permitting and constructing of the project.

The field data will be reduced, adjusted, and plotted. The record boundary will be reconciled with the monumentation found in the field. Easements recorded with the record deed will be plotted (if their location can be determined) on the plan. The planimetric detail will be plotted along with a compilation of the utility information received from the utility agencies. Contours will be based on a one-foot contour interval.

BSC does not provide any guarantee that all underground utilities will be discovered and/or documented on the Existing Conditions Plan. In the absence of accurate record plans, or visible evidence on the ground surface, it is not possible to locate underground utilities without additional investigation such as utility designation using specialized detection equipment. If requested, BSC will engage a third-party contractor to conduct such investigations as an additional service.

BSC will prepare a plan at an appropriate scale showing the information described above for use by BSC's engineering staff.

1.3 PERMITTING

BSC will prepare a Notice of Intent package with associated plans and narratives for approval of the project under the Massachusetts Wetlands Protection Act (M.G.L. ch 131 §40) and its implementing regulations (310 CMR 10.00 et seq.) Town of Andover Wetland Protection By-law (Article XIV) and its implementing regulations. The Notice of Intent will be submitted to the Andover Conservation Commission and the Department of Environmental Protection (DEP) in accordance with local and state filing requirements. BSC will coordinate with the Commission to determine the responsibility for providing public notice in the newspaper. BSC will verify local requirements for abutter notification and obtain the appropriate abutters list from the town and mail abutter notifications. Filing fees and advertisement costs will be billed separately.

Such filing preparation assumes pre-filing coordination with the Andover Conservation Commission including an on-site meeting conducted by a BSC Senior Project Scientist, coordination with the Client and Conservation Commission throughout the permitting process, complete preparation of Notice of Intent

documents, to include Abutter Notification, attendance at two (2) remote (Zoom or equivalent) public hearings, and a site walk with the Commission by a BSC Senior Project Scientist. BSC will review the expected Order of Conditions and any Special Conditions to identify unusual issues adverse to the Client's interest and record the Order in the appropriate County Registry of Deeds.

Additionally, BSC will prepare permitting materials, as may be required, by the Andover Planning Board for work within the Watershed Protection District.

Upon project completion, BSC will file a request for Certificate of Compliance and record such with the appropriate County Registry. BSC has budgeted two (2) hours for this task.

1.4 DESIGN DOCUMENTS

Working with the Town, BSC will prepare a 95% and 100% Construction plan sets showing the improvements. The 95% Construction Documents will be used for permitting, and the 100% Construction Documents will be for the purpose of construction of the approved work. All submittals to the Town will be electronic. BSC's Design Documents will also include a project manual with specifications to cover construction described on the plans. Front end and contractual documents of the project manual will be provided by the Town and incorporated by BSC into the Project Manual.

A construction cost estimate, using unit pricing, will be prepared based on the approved plans and using the estimated construction quantities. The construction documents (plans, project manual, and construction cost estimate) will be submitted to the Town for review and comment. All review comments will be satisfactorily addressed and/or incorporated into a final set of construction documents as appropriate.

The construction plans will be submitted to the Town for review and comment. All review comments will be satisfactorily addressed and/or incorporated into a final set of construction documents as appropriate.

The BSC site plans will include:

- Cover Sheet
- Sediment & Erosion Control Plan: Plan illustrating best management practices to manage the construction activities sediment and erosion control.
- Site Plans: Plan illustrating Site construction materials, dimensioned layout, utilities, existing and proposed contours, drainage improvements, and general Site construction features.
- Re-Vegetation Plan: Plan illustrating seeded areas and landscape planting to replace existing plantings that maybe damaged or need to be removed and replaced to accommodate the improvements.
- Details: Details at appropriate scale to support the Construction.

Additionally, BSC will prepare a Stormwater Management Report in accordance with the Massachusetts Stormwater Handbook and the Town of Andover stormwater requirements. This Report will be used in the permitting efforts above to design and show how the project meets with stormwater runoff attenuation, treatment, and infiltration requirements. Supporting documents will include hydrologic analysis, hydraulic calculations, and compensatory flood mitigation measures sufficient for review by the Andover Conservation Commission. BSC will submit the plan set, reports and narrative to the Client for review, and one set of comments will be incorporated.

1.4 BIDDING ASSISTANCE

BSC will attend a pre-bid meeting, respond to requests for additional information, prepare bid addenda and review and comment on construction bids as necessary in support of the Project. Bid references will be checked and a recommendation letter prepared.

1.5 CONSTRUCTION ENGINEERING SUPPORT

BSC will provide construction engineering support (including, periodic construction meetings; response to requests for information; and review of contractor-submitted shop drawings). This is based on a 12-month construction duration and has been initially budgeted at 200 hours. Additional time may be required for other support activities or a longer construction period.

2.0 ADDITIONAL SERVICES

The following services are not included as a part of this Agreement. These services may become necessary based upon the conclusions derived from the performance of the proposed scope above. If required, these services will be performed for an additional fee to be paid on an hourly basis in accordance with the attached BSC Fee Schedule.

- Any other services not identified in the Scope of Services.
- Activities related to the collection, handling, or treatment of hazardous materials.
- Geotechnical work of any kind.
- Coordination with utility companies and design or modification of electrical, telephone, cable television, fiber optic, and or natural gas facilities for this Project.
- Underground utility location/designation services to detect accurate location(s) of underground utilities.
- Copies of Bidding Plans and Specifications.

3.0 SCHEDULE FOR SERVICES

BSC proposes to begin the services identified in Section 1.0 of this Agreement upon receipt of written authorization to proceed. Proposed services will begin within an overall project schedule to be agreed upon with the Client. It is understood that the portion of the project related to the Mass Trail Grant will need to be constructed and completed prior to May 31, 2024.

4.0 FEE FOR SERVICES

BSC has estimated the following lump sum budgets for the tasks described in Scope of Services above. BSC shall inform the Town as soon as practical if it becomes necessary to exceed the budget in order to perform all proposed and additional services required. BSC will not perform services that would result in exceeding the estimated budgets without prior agreement of Corporation.

Task 1.1 – Wetland Delineations	\$ 7,500
Task 1.1 – Existing Conditions Plan	\$38,000
Task 1.2 – Permitting	\$18,000
Task 1.3 – Design Documents	\$47,000
Task 1.4 – Bidding Support	\$ 2,500
Task 1.5 – Construction Engineering Support	<u>\$35,000</u>
Project Total	\$148,000