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TOWN OF ANDOVER

CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

DATE: 9/8/2023

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

CDM Smith Inc.
75 State Street, Suite 701
Boston, MA 02109
617-452-6000

1. This is a Contract for the procurement of the following: **Professional Engineering Services for Engineering Services during Construction of the Ledge Road Landfill Closure Project**. Refer to Exhibit A and Exhibit B for specific scope of services.
2. The Contract price to be paid to the Contractor by the Town of Andover is: Engineering Services during Construction will be executed under the terms of this Contract and as detailed in Exhibit A, and paid using the hourly rates included and made part of this contract as Attachment A.
3. Payment will be made as follows: Within thirty (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 **December 31, 2025**, 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.

1) Notwithstanding the foregoing, this Agreement will not terminate for cause if the Contractor begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and Contractor has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

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 any negligent act or omission in the performance of services 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.

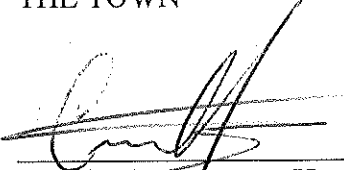
35.11 Coverages are to be maintained for a period of 3 years after final payment.

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


Division/Department Head

9/1/23
Date

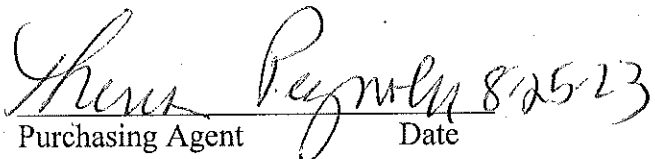
CDM Smith Inc.
Company Name


Town Manager

9/8/23
Date


Signature

8/18/23
Date


Purchasing Agent

8/25/23
Date

Lisa H. Gove
Client Service Leader/Vice President

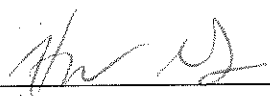
Print Name & Title

APPROVED AS TO FORM:


Town Counsel

Sept. 7, 2023
Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS:


Town Accountant

9/1/23
Date

105 TM23 62141-5700

CERTIFICATION OF GOOD FAITH & NON-COLLUSION

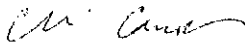
The undersigned certifies under pains and penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee,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



Lisa Gove
CDM Smith Client Service Leader

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, CDM Smith Inc. is 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

Christopher R Campbell

Printed Name

CDM Smith Inc.

Name of Business (if applicable)

04-2473650

Social Security or Federal Tax Identification Number

**EXHIBIT A
TO AGREEMENT BETWEEN
OWNER AND ENGINEER**

Engineering Services during Construction – Ledge Road Landfill Closure

Scope of Work

This is an exhibit attached to and made a part of the Agreement dated _____, 2023, between The Town of Andover, Massachusetts (the Town) and CDM Smith Inc, (the Contractor) for professional services. For this Exhibit A, the Town is referred to as “OWNER” and the Contractor is referred to as “ENGINEER”.

Background

ENGINEER shall provide engineering services during construction for the Ledge Road Landfill Closure project (IFB# 422/019/23). The project includes capping of the former landfill inclusive of but not limited to waste relocation, stormwater controls, landfill gas migration controls, removal of arsenic contaminated soils in downgradient wetlands for placement below the cap, associated wetland restoration and replication, and stormwater drainage improvements for Greenwood Road. Work is to be performed in accordance with the Massachusetts Department of Environmental Protection (MassDEP) Solid Waste Regulations (310 CMR19.000) and the Massachusetts Contingency Plan (MCP) (310 CMR 40.00) as well as all associated project permits and approvals. The project is also subject to an Administrative Consent Order (ACO#00014158) executed on November 29, 2022 between the Town of Andover and MassDEP.

ENGINEER’s scope of work presented below is based on the Contract Documents for Ledge Road Landfill Closure and associated permits and regulations. Work is anticipated to start on the date that OWNER completes execution of the construction contract, anticipated July 7, 2023. While the Construction Contract duration is 880 days, resulting in an end date of about December 3, 2025, ENGINEER’s work will extend beyond this date to allow completion of the MassDEP required Certification Report and MCP closeout.

ENGINEER will provide General Services for construction management (project coordination, shop drawing review and approval, contractor pay application review, change order management, etc.); and Resident Project Representative inspection services. Related services to be provided include: sampling to confirm limits of arsenic contaminated wetland soil removal, Immediate Response Action (IRA) assistance relative to the MCP, Public Involvement Plan (PIP) coordination and associated public outreach, environmental monitoring, and the landfill closure Certification Report with Record Drawings. The detailed scope of work for the Construction Phase is as follows.

Construction Phase – Scope of Work

Task 1 - Engineering Services during Construction

1.1 General Administration of Construction Contract.

ENGINEER shall consult with and advise OWNER and act as OWNER’s representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except to the extent provided herein. All of OWNER’s instructions to Contractor will be issued through ENGINEER who shall have authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement and said Standard General Conditions except as otherwise provided in writing.

1.2 Visits to Site and Observation of Construction.

In connection with observations of the work of Contractor while in progress:

- 1.2.1 ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's work. In addition, ENGINEER shall provide the services of a Resident Project Representative at the site to assist ENGINEER and to provide more continuous observations of such work. The furnishing of such Resident Project Representative services will not extend ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this paragraph 1.2. Such visits and observations by ENGINEER and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of the work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative. Based on information obtained during such visits and such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in paragraph 1.2.2 and other express or general limitations in this Agreement and elsewhere.
- 1.2.2 The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
- 1.2.3 Duties, Responsibilities and Authority of the Resident Project Representative are set forth in Exhibit B.
- 1.3 Defective Work
During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
- 1.4 Clarifications and Interpretations; Field Orders
ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
- 1.5 Change Orders and Work Change Directives
ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.
- 1.6 Shop Drawings
ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the

Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.7 Substitutes

ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. However, services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitute which is appropriate for the Project or an excessive number of substitutes will only be performed pursuant to an amendment to this Agreement for additional compensation.

1.8 Inspections and Tests.

ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.

1.9 Disagreements between OWNER and Contractor

ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

1.10 Applications for Payment.

Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:

1.10.1 ENGINEER shall determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of ENGINEER contained in paragraph 1.10.1 are expressly subject to the limitations set forth in paragraph 1.10.2 and other express or general limitations in this Agreement and elsewhere.

1.10.2 By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the

Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interests or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

1.11 Contractor's Completion Documents

ENGINEER shall receive, review and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents (including Shop Drawings, Samples and other data approved as provided under paragraph 1.6 and marked-up record Drawings) which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

1.12 Substantial Completion

Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

1.13 Final Notice of Acceptability of the Work

ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall indicate that the work is acceptable (subject to the provisions of paragraph 1.10.2) to the best of ENGINEER's knowledge, information and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

1.14 Limitation of Responsibilities

ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

1.15 Duration of Construction Phase

The Construction Phase will commence with the execution of the construction contract for the Project or any part thereof and will terminate upon written recommendation by ENGINEER of final payment.

1.16 Assumptions for Task 1 – Engineering Services during Construction

- a. Respond to up to twenty (20) Requests for Information (RFI).
- b. Review up to sixty (60) Submittals.
- c. Attend and facilitate a pre-construction meeting and monthly progress meetings. Assume up to seventeen (17) progress meetings based on the duration of the Construction Contract. Prepare Agenda in advance of meetings. Prepare and distribute meeting notes following each meeting.
- d. Prepare up to six (6) Change Orders to the construction contract.
- e. If during waste relocation, materials are encountered that may not be permitted to be disposed in the landfill (e.g., drums, suspect asbestos containing materials, etc.), steps would be required to characterize this material and determine if it needs to be disposed offsite. Such efforts are not included in the scope and budget of this Agreement. If such materials are encountered, ENGINEER will immediately so advise OWNER, and prepare scope and budget for inclusion in an Amendment to cover related services. The Amendment services might include, but not be limited to characterization, waste coordination, profiling, etc.
- f. Provide up to 3,000 hours of Resident Project Representative services from July 2023 through December 2024 (substantial completion) with one winter shutdown (per Paragraph 1.2 and 1.4 above, and Exhibit B). Resident Project Representative will support engineering services during construction relative to such items as pay application reviews, facilitating monthly construction progress meetings, contractor

change order review/coordination, inspections following precipitation events of greater than one-inch with documentation, and assisting with public outreach.

Task 2 -MassDEP Reporting Requirements and Coordination

2.1 Notification of Construction

Not less than seven (7) days prior to the commencement of construction, notify MassDEP and the Town of Andover Board of Health (the BOH) in writing of the scheduled date of the commencement of construction at the site. The construction notification will include the following:

- a. The construction contractor's projected schedule for completion of the project and major construction milestones;
- b. The name and contact information for the Engineer of Record for the project;
- c. The name and contact information of an on-site contact for the project;
- d. The construction contractor's National Pollutant Discharge Elimination System (NPDES) Notice of Intent and Storm Water Pollution Prevention Plan (SWPPP) for the project; and
- e. The construction contractor's Health and Safety Plan for the project.

2.2 Solid Waste Engineer of Record

- a. Serve as the Solid Waste Engineer of Record for the duration of the closure project. Monitor project progress relative to the MassDEP Solid Waste Regulations 310 CMR 19.000 and permits issued by MassDEP Solid Waste. Engineer or Record or his/her qualified representative shall conduct routine inspections as construction progresses, including:
 1. An initial inspection (Pre-Construction Inspection) prior to the commencement of construction activities to document the pre-construction conditions.
 2. An inspection within seven (7) days of commencement of construction activities and thereafter a minimum of one (1) inspection monthly until the construction of the Landfill modifications are substantially complete (total of 17 months).
 3. An inspection within two (2) days after each precipitation event with rainfall greater than 1 inch in a 24-hour period to evaluate the site conditions and status of the erosion and sediment controls. Resident Project Representative will act as Engineer's qualified representative for these inspections. During each inspection, assess whether additional measures are needed to prevent erosion and sedimentation and document any impacts to the project area. Results of each inspection will be summarized in the monthly Construction Monitoring Reports to MassDEP. Needed corrective actions will be identified a corrective action plan will be prepared and submitted to MassDEP in accordance with the permit requirements.
 4. A final inspection within seven (7) days following final completion of construction to document the post-construction conditions of the Landfill (Post-Construction Inspection).
- b. Solicit input from MassDEP as appropriate, when issues/questions arise.
- c. As project progresses, there are expected to be some changes requiring permitting by MassDEP. Prepare up to two MassDEP SW-45 presumptive approval permit applications relative to such changes. Address comments from MassDEP to secure approval.
- d. As cap construction progresses, unanticipated circumstances may arise requiring grading changes to ensure proper slope and cap installation. Modify design drawings to address such circumstances. Direct the contractor accordingly. Inform MassDEP when and if necessary.
- e. Up to two hundred forty (240) hours are assumed for this effort excluding precipitation event inspection inspections, which will be performed by the Resident Project Representative.

2.3 Monthly Reporting

Prepare and submit monthly Construction Monitoring Reports to MassDEP through substantial completion (17 reports). Each report shall be submitted by the 15th of the month. Copies will be distributed to the Town and Information Repository. The reports will:

- a. Document inspections performed during the previous month;
- b. Identify actual or potential deviations from the applicable regulations, permit requirements, and all applicable plans and approvals; and
- c. Document any deviations identified including a description of the deviation, corrective actions taken or

planned, schedule, and photographs.

2.4 Certification Report

Within ninety (90) days after the conclusion of construction, prepare a Construction Certification Report for submittal to MassDEP as an application category BWP SW43 Landfill Closure Completion in accordance with the MassDEP Solid Waste Regulations 310 CMR 19.000. Report will be stamped/sealed by the Solid Waste Engineer of Record. The Construction Certification Report will include the following:

- a. As-built plans for the final as-constructed improvements, amended to incorporate all modifications and alterations, if any, made during construction;
- b. A report providing applicable quality control/ quality assurance data and certifying that the closure was completed in conformance with the approved plans and 310 CMR 19.000;
- c. A copy of the Notice of Landfill Operation (prepared by others), pursuant to 310 CMR 19.141, as recorded in the registry of deeds or in the registry section of the land court for the district wherein the Landfill lies in accordance with M.G.L. c. 111, sec 150A;
- d. A Post-Closure Monitoring and Maintenance Plan for the Landfill (refer to paragraph 2.5 below); and
- e. Certifications by the Town and the Engineer of Record pursuant to 310 CMR 19.011.

2.5 Post-Closure Monitoring and Maintenance Plan

Prepare a Post-Closure Monitoring and Maintenance Plan for the Landfill (the Post-Closure Plan) to be submitted with the Construction Certification Report (paragraph 2.4). The Post-Closure Plan shall be prepared in accordance with 310 CMR 19.000. The Post-Closure Plan shall include:

- a. Schedules and a description of the inspection and maintenance tasks and other activities related to the final cover system, access roads, and the environmental monitoring of the Landfill as outlined in 310 CMR 19.132;
- b. A site plan drawing showing the ground water, surface water, and landfill gas sampling locations, the property boundaries, and other significant site features;
- c. Boring and well construction logs for each new monitoring well installed, and all available boring and well construction logs for monitoring wells to remain in the monitoring network;
- d. A landfill cap effectiveness program to periodically evaluate the groundwater levels within the landfill; and
- e. A wetlands soils monitoring program to periodically evaluate arsenic concentrations in wetlands soil and sediment.

2.6 Monitoring Well Installation Oversight

- a. Provide geologist to oversee monitoring well installation by construction contractor.
- b. Prepare boring/well completion logs.
- c. Assumes 10 days of field time for the drilling/well installation.

Task 3 – Wetland Compliance Activities

3.1 Confirmation Sampling for Arsenic

- a. Once Contractor stakes limits of arsenic impacted wetland soil removal areas per the design drawings, ENGINEER shall perform confirmation sampling along the outer edge of each area. Collect up to 80 samples and submit to a state certified laboratory for arsenic analysis. Obtain coordinates of sample locations using handheld GPS. Review results and determine if delineated areas of arsenic impacted soil need revision based on the site standard of 900 mg/kg. As needed, modify design drawings and direct Contractor accordingly.
- b. As removal progresses, sample bottom of area to confirm that removal of arsenic contaminated wetland soil is complete. Collect up to 40 samples and submit to a state certified laboratory for arsenic analysis. Obtain coordinate of sample locations using handheld GPS. Review results and determine if removal is complete. Inform the OWNER and direct the Contractor accordingly if additional removal is required.
- c. Document the results of all arsenic sampling for inclusion in the Certification Report.

3.2 Wetland Inspections and Reporting

ENGINEER shall provide a Qualified Professional Wetland Scientist as needed during construction activities within the wetland resource areas. The Qualified Professional Wetland Scientist will:

- a. Complete and return to the U.S. Army Corp of Engineers the Mitigation Work Start Notification Form prior to the start of work.
- b. Review re-delineated wetland boundaries by the construction contractor.
- c. Review the erosion control boundary as staked in the field by the construction contractor in advance of the inspection by the Andover Conservation Commission.
- d. Attend Pre-Construction Meeting with the construction contractor, the Andover Conservation Agent, and the Commission's Environmental Monitor.
- e. Provide the pre-construction documentation and notifications to the Andover Conservation Commission as required by the Order Conditions as amended.
- f. Coordinate with the construction contractor for appropriate access and staging of equipment and supplies for wetland mitigation and restoration and wetland replication.
- g. Provide periodic oversight of wetland soil excavation and wetland restoration and replication (up to 72 hours assumed for this effort).
- h. Make a photographic record of the pre, during, and post-construction condition of work in Resource Areas.
- i. Prepare weekly progress reports to the Andover Conservation Commission through completion of permanent and temporary Resource Area alterations, restoration, and wetland replication. It is assumed that this portion of the work will require approximately 16 weeks to complete; therefore, up to 16 reports are assumed for this effort.

3.3 Post-Construction Wetland Monitoring

The Order of Conditions requires five consecutive years of post-construction wetland monitoring to be initiated following completion of wetland restoration in the arsenic removal area and construction of the replicated wetland. It is expected that the restoration/replication will be completed by Spring 2024. This scope and budget include the first two years (2024 and 2025) of the wetland monitoring to coincide with the anticipated end date of this Agreement (December 2025). Services include:

- a. Monitor the Wetland Replication Area during the 2024 and 2025 growing seasons, with one inspection in the spring and a second inspection in the fall.
- b. Prepare written annual report for the 2024 and 2025 growing seasons and submit to the Andover Conservation Commission and MassDEP no later than November 1st.
- c. The additional three years of post-construction wetland monitoring and associated reporting are outside the time period of performance of this Agreement and may be added by amendment at the discretion of the OWNER.

Task 4 – Immediate Response Action

4.1 IRA Status Reports

Prepare up to three IRA Status Reports per requirements of the Massachusetts Contingency Plan (MCP) to be submitted to MassDEP in August 2023, February 2024, and August 2024. Reports shall be executed by a Licensed Site Professional (LSP). Provide draft copies for OWNER's review and incorporate comments. Submit the reports to MassDEP on behalf of OWNER.

4.2 IRA Closeout Report

Following confirmation that soil with arsenic greater than 900 mg/kg has been removed from wetland hotspot areas (anticipated 2024), prepare and submit IRA Completion Report in accordance with 310 CMR 40.027. Report shall be executed by a LSP.

Task 5 – Environmental Monitoring

5.1 Landfill Gas / Water Sampling and Reporting

FY2024 monitoring will be conducted under separate existing agreement.

This agreement includes environmental monitoring from July 2024 through December 2025 (a period of one and a half years). The end date of this monitoring corresponds to the construction contract end date and the period of performance of this Agreement.

Perform three water sampling rounds and six quarterly landfill gas monitoring rounds. All such work shall be performed in accordance with the MassDEP approved Environmental Monitoring Plan (EMP) and MassDEP Solid Waste Regulations (310 CMR 19.000). A detection limit lower than the standard will be employed in the analysis of 1,4-dioxane in all water samples. Notification of exceedances will be submitted to MassDEP as required by 310 CMR 19.000. All water quality analyses shall be performed by a Massachusetts certified laboratory serving as a subcontractor to ENGINEER. Reports of each monitoring round shall be prepared for OWNER's review, followed by submission to MassDEP. OWNER shall be responsible for executing a Certification statement as required by 310 CMR 19.011 for each report.

ENGINEER shall inform OWNER prior to initiation of each field event.

Note that semi-annual air quality monitoring was removed from the EMP per MassDEP correspondence of April 11, 2017.

Draft reports for each monitoring round shall be issued to OWNER for review via email. Final reports shall be distributed via email with original to MassDEP and three copies to OWNER for filing in the Information Repositories.

Task 6 - Public Involvement Plan (PIP) Continuation

6.1 Information Repository Maintenance

Provide up to thirty (30) labor-hours to assist with management of the PIP and Information Repository, including maintenance of the online SharePoint folder. All project related documents are to be placed in the Information Repository.

6.2 PIP Meetings

Plan for, attend and facilitate up to three PIP meetings during the course of the cap construction project. Prepare the meeting notification which will be advertised and posted by the Town. Perform mailing of notices to the PIP mailing list. Prepare the meeting Agenda and PowerPoint presentation. The project LSP, Solid Waste Engineer, and Resident Project Representative shall be present at the meetings. Prepare and distribute meeting notes in accordance with PIP requirements.

6.3 Additional PIP Coordination

Update and maintain the PIP mailing list. Respond to miscellaneous requests from the public. Keep OWNER informed of such inquiries. Up to thirty (30) hours are included.

Task 7 – General Consulting Allowance

A budget of up to One hundred fifty (150) hours is provided for additional general consulting tasks requested by OWNER. This might include, but not be limited to the following types of services: additional meetings with the Town, stakeholders, and/or permit agencies; review of adjoining park development plans relative to landfill closure; Administrative Consent Order assistance, etc.

Task 8 – Project Management

8.1 Project Administration

Perform project management to administer the project, inclusive of project setup and tracking of scope, budget, and schedule. Develop active change log. Conduct internal project meetings to monitor progress.

8.2 Project Kickoff Meeting

ENGINEER will meet with OWNER at the start of the project to establish project priorities, roles and responsibilities, and procedures for documenting changes to the project.

8.2 Project Meetings

Attend up to fifteen (15) meetings with OWNER during the course of the project to provide project status updates including project changes. Such meetings are anticipated to be with the DPW, Board of Selectmen, or Town Departments as needed. Prepare agenda and meeting minutes for distribution.

8.3 Invoicing and Financial Tracking

Prepare project invoices monthly. Each invoice shall be submitted with a project status report. As needed, prepare cash flow trends to confirm sufficient funds available to achieve completion.

2.0 OWNER'S RESPONSIBILITIES

2.1 Furnish to ENGINEER, as requested by ENGINEER for performance of Services as required by the Contract Documents, the following:

2.1.1 Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;

2.1.2 Appropriate professional interpretation of all of the foregoing;

2.1.3 Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;

2.1.4 Property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference points;

2.1.5 Property descriptions;

2.1.6 Zoning, deed and other land use restrictions; and

OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data and information in performing or furnishing services under this Agreement.

2.2 Provide, as required by the Contract Documents, engineering surveys and staking to enable Contractor to proceed with the layout of the work, and other special field surveys.

2.3 Provide access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

2.4 Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate with respect to such examination) and render in writing decisions pertaining thereto.

2.5 Provide approvals and permits from all governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER and such approvals and consents from others as may be necessary for completion of such portions of the Project.

2.6 Provide, as may be required for the Project:

2.6.1 Accounting, bond and financial advisory, independent cost estimating and insurance counseling services;

- 2.6.2 Such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and
- 2.6.3 Such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.
- 2.7 Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify:
 - 2.7.1 That Contractor is complying with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work; or
 - 2.7.2 That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

ENGINEER does not undertake in this Agreement to perform the services referred to in 2.7.1 and 2.7.2 above. The identity of any individual or entity employed to perform such services and the scope of such services will be disclosed to ENGINEER.

- 2.8 Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering, and Constructability Review. If OWNER designates a person or entity other than, or in addition to, ENGINEER to represent OWNER at the site, OWNER shall define and set forth in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin, the duties, responsibilities and limitations of authority of such other party and the relation thereof to the duties, responsibilities and authority of ENGINEER.
- 2.9 Prior to the commencement of the Construction Phase, notify ENGINEER of any variations in the language of the Notice of Acceptability of Work, or of any notice or certification other than such Notice that ENGINEER will be requested to provide to OWNER or third parties in connection with the financing or completion of the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification and OWNER shall authorize such Special Services as are necessary to enable ENGINEER to provide the notice or certification requested under this paragraph.
- 2.10 If more than one prime contract is to be awarded for work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime contractors, and define and set forth the duties, responsibilities and limitations of authority of such person or entity and the relation thereof to the duties, responsibilities and authority of ENGINEER in an exhibit that is to be mutually agreed upon and attached to and made a part of this Agreement before such services begin.
- 2.11 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 2.1, 2.2 and 2.4 through 2.11, inclusive) and other costs so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.
- 2.12 Attend the pre-construction conferences, construction progress and other job-related meetings and Substantial Completion and final payment inspections.
- 2.13 Provide labor and safety equipment to open and protect manholes and/or to operate valves and hydrants as required by the ENGINEER.
- 2.14 Prepare Notice of Landfill Operations (NOLO) for recording on the deeds of all landfill parcels to be

included with the Construction Certification Report.

2.14 Bear all costs incident to compliance with the requirements of the OWNER's Responsibilities.

3.0 TIME PERIOD FOR PERFORMANCE

The time periods for the performance of ENGINEER's services as set forth in Article 2 of said Agreement are as follows:

ENGINEER's services under this Agreement shall be initiated following receipt of written authorization from the OWNER to proceed and shall be completed by December 31, 2025.

Construction Certification Report and Application, Category BWP SW43 Landfill Closure Completion for the certification of closure construction shall be submitted by November 1, 2025.

IRA Completion Report shall be submitted by December 31, 2025.

4.0 METHOD OF PAYMENT

The method of payment for Services rendered by ENGINEER shall be as set forth below:

OWNER agrees to pay the ENGINEER as follows:

- A. For work done by the ENGINEER at the hourly billing rate for the category of the individual performing the work, for all time directly chargeable to the project plus actual out-of-pocket expense cost. The ENGINEER's schedule of Hourly Billing Rates is provided in Attachment A – Schedule of Hourly Billing Rates, attached to and hereby incorporated into this Agreement. Hourly compensation for the Resident Project Representative will be \$190.00 per hour. Hourly rates shall increase by four percent on April 1 of each year, starting April 1, 2024.
- B. In the performance of these services, CDM Smith may use personnel and other resources from CDM Smith affiliated companies. The personnel from CDM Smith affiliated companies will be billed at the hourly billing rates provided in this agreement. Other costs from CDM Smith affiliated companies will be reimbursed as provided herein.
- C. Actual out-of-pocket expense cost are all costs other than ENGINEER's labor cost that are incurred during the progress of the work. The actual out-of-pocket expense costs include: air fare, automobile rental if required, mileage charges, parking, tolls, taxi, meals, lodging, telephone, printing and reproduction costs, and other miscellaneous costs incurred specifically for this project.
- D. The charges for rental of field equipment will be at the ENGINEER's regular rates.
- E. For work done by subcontract or consultants, including analytical laboratories, at the actual cost to the ENGINEER of such services plus 10 percent.
- F. In the performance of these services, select an entity ("CDM Smith") may use personnel and other resources from CDM Smith affiliated companies. The personnel from CDM Smith affiliated companies will be billed at the hourly billing rates provided in this agreement. Other costs from CDM Smith affiliated companies will be reimbursed as provided herein.
- G. Budgets are as summarized by task in the table below. OWNER and ENGINEER agree that these budgets are estimates of the anticipated cost per task and that the task items are not intended as individual ceilings for specific tasks. ENGINEER shall be allowed to adjust budgeted amounts between the tasks.

Description	Budget
Task 1 - Engineering Services during Construction	\$ 242,000
Task 2 – Resident Project Representative Services	\$ 627,300
Task 3 - MassDEP Reporting Requirements and Coordination	\$ 118,000
Task 3 – Wetland Compliance Activities	\$ 163,100
Task 4 – Immediate Response Action	\$ 32,100
Task 5 – Environmental Monitoring	\$ 108,500
Task 6 - Public Involvement Plan (PIP) Continuation	\$ 24,400
Task 7 – General Consulting Allowance	\$ 30,000
Task 8 – Project Management	\$ 106,600
TOTAL	\$ 1,452,000

d. The total cost of all ENGINEER services shall not exceed \$1,452,000.

5.0 SPECIAL PROVISIONS

OWNER has established the following special provisions and/or other considerations or requirements in respect of the Assignment:

None



Attachment A

Schedule of Hourly Billing Rates

<u>Categories</u>	<u>Hourly Rates</u>
<u>Professional Services</u>	
Senior Expert/Supervisor/Client Service Leader	\$265.00
Professional VI/Project Manager II	\$245.00
Professional V	\$230.00
Professional IV	\$215.00
Project Manager I	\$190.00
Professional III/Scientist III/Task Manager	\$180.00
Professional II/Scientist II	\$160.00
Professional I/Scientist I	\$135.00
Staff Engineer II/Staff Scientist II	\$115.00
Staff Engineer/Scientist	\$110.00
Intern	\$ 80.00
<u>Field Services</u>	
Senior Professional	\$150.00
Professional	\$130.00
Field Technician	\$110.00
<u>Project Support Services</u>	
Sr. Project Administration	\$120.00
Project Administration	\$ 95.00
Administration Support	\$ 80.00
<u>Global Resources Staff Services</u>	
Sr. Engineer/Architect/GIS/Modeler/Drafter	\$ 90.00
Mld. Engineer/Architect/GIS/Modeler/Drafter	\$ 70.00
Engineer/Architect/GIS/Modeler/Drafter	\$ 60.00
Support/Admin	\$ 50.00

All subconsultant expenses are subject to an administrative markup of 10%.

All expenses such as mileage, printing, and field equipment rental shall be at cost with no markup.

All Global Resources Staff Services provided by CDM Smith, Inc. affiliated companies.

RATES EFFECTIVE: 2020 – 2023

**EXHIBIT B TO AGREEMENT
BETWEEN
OWNER AND ENGINEER**

**DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY
OF THE RESIDENT PROJECT REPRESENTATIVE**

This is an exhibit attached to and made a part of the Agreement dated _____, 2023, between The Town of Andover, Massachusetts (the Town) and CDM Smith Inc, (the Contractor) for professional services. For this Exhibit B, the Town is referred to as "OWNER" and the Contractor is referred to as "ENGINEER".

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor. However, ENGINEER shall not, as a result of such observations of Contractor's work, supervise, direct, or have control over any Constructor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by any Constructor, for safety precautions and programs incident to the work of any Constructor, for any failure of any Constructor to comply with laws, rules, regulations, ordinances, codes or orders applicable to performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's Agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals schedule of values, and other schedules prepared by Contractor and consult with ENGINEER concerning their acceptability.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings (but not Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
3. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

4. *Liaison:*
 - a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Construction Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.
 - b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
5. *Shop Drawings and Samples:*
 - a. Record date of receipt of Shop Drawings and Samples.
 - b. Receive Samples that are furnished at the site by Contractor, and notify ENGINEER of availability of Samples for examination.
 - c. Advise ENGINEER and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.
6. *Review of Work, Defective Work, Inspections, Tests and Start-ups:*
 - a. Report to ENGINEER whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
 - b. Inform ENGINEER of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
 - c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
 - d. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
 - e. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
 - f. Accompany visiting inspectors representing public or other agencies having jurisdiction over the work, record the results of these inspections and report to ENGINEER.
7. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
8. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.

9. *Records:*

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, copies of Construction Contract Documents including all Work Change, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, approved Shop Drawing submittals and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, Subcontractors present at the Site weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- c. Record names, addresses, e-mail addresses, websites and telephone numbers of all Contractors, Subcontractors and major suppliers of materials and equipment.

10. *Reports:*

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders.
- d. Report immediately to ENGINEER and OWNER the occurrence of any accident.

11. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

12. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

13. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.
- c. Conduct a final inspection in the company of ENGINEER, OWNER and Contractor and prepare a final list of items to be completed or corrected.

- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. Limitations of Authority by RPR

Resident Project Representative:

1. Shall not authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or any Constructor.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

