

**AGREEMENT FOR DESIGNER'S SERVICES**

THIS AGREEMENT is made as of the <sup>6<sup>th</sup></sup> day of MARCH 2024, by and between Weston & Sampson, Inc. (hereinafter called the "Designer") and the TOWN OF ANDOVER, MASSACHUSETTS, a municipal corporation duly established under the laws of the Commonwealth of Massachusetts (hereinafter called the "Town").

**PRELIMINARY RECITALS**

A. The Town seeks to obtain certain engineering/architectural services associated with the Andover Dog Park on High Plain Road.

B. The Designer possesses the expertise to perform and/or coordinate such services in a timely and professional manner.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

**Section 1. Description of Project/Scope of Services** The nature and scope of the services to be performed by the Designer are described in and attached hereto and made a part hereof (the "Services").

**Section 2. Time for Performance** The Services shall be performed and completed within the time and in accordance with the schedule set forth in and attached hereto and made a part hereof.

**Section 3. Designer's Status** The Designer's relationship to the Town is that of an independent contractor and not that of an agent or employee of the Town.

**Section 4. Designer's Performance**

4.1 In the performance of the Services, the Designer will observe and comply with all federal, state and local laws, ordinances, codes, rules, regulations and orders applicable to the Project and the Services to be rendered by the Designer in connection therewith. If the Designer or any of its sub-consultants performs Services which the Designer knew or should have known to be contrary to any laws, statutes, ordinances, building codes, rules, regulations without notice to the Town, the Designer shall assume full responsibility for such work and shall bear and be liable to the Town for the attributable costs and damages arising therefrom and indemnify the Town against any damages, costs and adverse consequences of any kind thereof.

4.2 Where applicable to this Agreement, the provisions of the Massachusetts General Laws are incorporated by reference into this Agreement. Wherever applicable law mandates the inclusion of any term or provision into a municipal contract, this Section shall be understood to import such term or provision into this Agreement. To whatever extent any provision of this Agreement shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

4.3 All of the Services to be performed by the Designer under or pursuant to this Agreement, from the inception of the Agreement until the Services have been fully performed, shall conform to the standards of care and skill which prevail among competent and qualified professionals under the same or similar circumstances involving a project and services such as the Project and Services described herein.

4.4 The Designer shall coordinate and/or provide all technical and professional services, including labor, materials, supplies, equipment, transportation, accommodation, subsistence and supervision to perform all Services as set forth in the Request for Qualifications/Proposals for the Project, Addenda thereto and the Designer Responses submitted in response thereto, and Schedules I, II & III attached hereto.

4.5 The Designer will perform the Services in the most expeditious and economical manner consistent with the interests of the Town.

4.6 The Designer represents and warrants that it is duly licensed (and in good standing) to perform the Services in the Commonwealth of Massachusetts. The Designer further represents and warrants that it is familiar with and has a working knowledge of the Massachusetts provisions of law relating to competitive bidding and public construction projects. The Designer agrees that if in the opinion of the Town, the Designer is not familiar with such provisions, the Designer shall engage at its own expense, competent personnel subject to the approval of the Town. The Town's approval of such personnel shall not relieve the Designer of its duties and obligations under this Agreement.

4.7 The Designer shall, at its own cost, completely repair, restore or replace (with the same or equal materials) any buildings or improvements damaged or injured by activities under this Agreement as a result of the Designer's activities or those of its agents, sub-Designers or employees. All such repair or replacement shall be completed to the Town's satisfaction. Should the Designer refuse or neglect to make such repairs or replacements within ten (10) days after receiving notice from the Town requesting such work, then the Town shall be entitled to perform such work at the expense of the Designer.

4.8 Designer shall, at its own cost, correct and make good any errors or defects in its Services, including, without limitations, any errors, omissions or defects in any plans, specifications, drawings or other documents prepared by the Designer or any of its Designers hereunder, as soon as Designer becomes aware of such errors or defects or is notified of such errors or defects.

4.9 Designer shall exercise due care to prepare all drawings, plans and specifications for the Project in conformity with the requirements of the State Building Code, 780 CMR 1.00, et. seq.

and to any other applicable federal, state, municipal and local laws, ordinances, rules, regulations, codes and orders, including, without limitations, the rules and regulations of the Massachusetts Designer Selection Board, 521 CMR 1.00 et. seq. Designer shall certify such matters to the Town and all other interested parties as and when requested by the Town from time to time. All such certificates shall be in a form reasonably acceptable to the Town and all other interested parties.

4.10 If the Services to be performed by the Designer involve the preparation of written materials, such written materials prepared and to be prepared by the Designer for the Project (and, in the case of drawings or plans and specifications, all improvements when built in accordance therewith) will conform to the requirements of the State Building Code, 780 CMR 1, et seq., and to any other applicable federal, state, municipal and local laws, ordinances, rules, regulations, codes and orders in effect at the time such work is performed. The Designer shall certify such matters to the Town and all other interested parties, as and when requested by the Town from time to time. All such certifications shall be in a form reasonably acceptable to the Town.

4.11 If required by the Town in the Scope of Services the Designer shall employ a photographer utilizing a digital camera to fully record the project building and site and related construction each month. A minimum of 40 images shall be recorded and transferred electronically to the Town each month along with the Designer's Application for Payment. Such responsibility may be assigned to the General Contractor, but must be coordinated and directed by the Designer.

4.12 The Designer shall give the Town not less than two (2) days prior notice of the commencement of any work under this Agreement involving entry upon any Site. Authorization must be obtained by the Designer from the Town prior to the Designer's entering upon any Site for purposes of conducting examinations and other work required to accomplish the Services. In addition, during the course of such entry, the Designer shall use diligent efforts to minimize damage to the building and interference with the use of such Sites.

4.13 Carlos Jacquez shall be the Town's primary contact person with the Designer, and Brandon Kunkel will be the Designer's primary contact person with the Town. These contact persons named herein shall remain with the Project as long as they remain employed by the respective party from start to completion of the Services covered in agreement. If a vacancy exists the Town retains the right to approve the proposed replacement.

4.14 All of the foregoing is in addition to, and not in lieu of, any and all other duties, obligations, liability and responsibility implied or imposed upon the Designer by law in connection with the Services to be performed by the Designer hereunder.

## **Section 5. Compensation**

5.1 The Designer shall be paid a "fixed fee" amount for each major phase of service in accordance with the proposal attached hereto, which will include all labor, overhead, profit, insurance, office, travel, and any other direct or indirect cost in connection with the Designer's provision of services as specified in the "Scope of Services" attached hereto, *except for*

“Reimbursable Expenses and Sub-Designers” under Section 5.3 hereof. The Contract Sum shall be paid as hereinafter provided in Section 6 hereof.

5.2 If the Designer’s fee is negotiated, the Designer shall provide a truth-in-negotiations certificate in the form prescribed by M.G.L. c.7C, sec. 51 at the time of final execution of this Agreement. (See Appendix A hereto.)

5.3 “Reimbursable Expenses and Sub-Designers” shall mean reasonable expenses not included in the Request for Proposals or Scope of Services and not foreseeable by the Town or the Designer at the time of execution of this Agreement, which shall be pre-approved by the Town and incurred by the Designer in connection with the conduct of approved Services associated with the printing, copying, and mailing/delivery of printed materials associated with plans and specifications and bid documents; and the use of outside sub-Designers for specialized technical services deemed necessary by mutual consent of the Designer and the Town not included in the Request for Proposals or Scope of Services and not foreseeable by the Town or the Designer at the time of execution of this Agreement. The Designer shall submit to the Town for approval a written scope of work and cost estimates for services proposal for each sub-Designer prior to proceeding with the specified work. Any costs for printing, copying and mailing/delivery of printed materials except as stated above is included as part of the fixed price. Payment for Reimbursable Expenses and Sub-Designers shall be made within thirty (30) days after receipt and approval by the Town of a detailed monthly invoice of such expenses. Said monthly invoices shall (i) include a detailed itemization of the services rendered/completed, along with attached copies of the original invoices submitted to and paid by the Designer, and (ii) be certified as correct by the Designer and shall contain a further certification by the Designer that all due and payable bills with respect to the expenses shown in such monthly invoice have been paid to date or shall be paid from the proceeds of the payment made pursuant to such invoice.

## **Section 6. Payment**

6.1 Based upon the documentation submitted to the Town as hereinafter provided, the Town shall make progress payments on account of the Contract Sum as follows: The Designer shall invoice the Town once per month for the portion of the Services rendered/completed during the past month. The amount of each monthly progress payment shall be equal to the percentage amount attributable to the specific Phase of the Scope of Services completed as set forth in Schedules I, II & III attached hereto, less retainage in such amount as the Town shall determine for any incomplete work and any claims of the Town against the Designer. The monthly invoice shall also contain separate progress payment sums for work performed/completed by any sub-Designer as specified under Section 5.3 of this Agreement. Monthly invoices shall be promptly processed by the Town if they are in conformity with the Contract terms and after submission to the Town of the following (all in form acceptable to the Town): (i) the certificate of the Designer stating that the Phase/portion of the Services for which payment is being requested has been completed in compliance with this Agreement; (ii) reproducibles of all plans, reports, studies and other materials to be prepared and delivered to the Town in connection with the Phase/portion of the Scope of Services for which payment is being requested.

6.2 Neither the Town's payment of any progress payment or any final payment on account of the Contract Sum hereunder, nor the Town's failure to withhold any such payment(s) shall result in or cause a release or discharge of the Designer of its obligations hereunder or constitute a waiver of any claims against the Designer.

6.3 Any provision hereof to the contrary notwithstanding, the Town shall not be obligated to make any payment (whether a Progress Payment or Final Payment) to the Designer hereunder if any one or more of the following conditions exist, to-wit:

6.3.1 The Designer is in default of any of its obligations hereunder or otherwise is in default under this Agreement;

6.3.2 Any part of such payment is attributable to Services which are not performed in accordance with this Agreement.

6.4 No Progress Payment or other partial payment made hereunder shall be, or be construed to be, final acceptance or approval of that part of the Services to which such Progress Payment or other partial payment relates or relieve the Designer of any of its obligations hereunder with respect thereto.

6.5 The making of Final Payment by the Town to the Designer shall not constitute a waiver of any claims by the Town against the Designer arising from (i) unsettled liens, (ii) faulty or defective Services, or any errors or omissions in the Designer performance of the Services, appearing after completion thereof, (iii) failure of the Services to comply with the requirements of this Agreement, or (iv) the terms of this Agreement or provided by law pertaining to the Designer's performance of the Services, or any breach thereof by the Designer, all of which shall survive such Final Payment and final acceptance of the Services. The acceptance of Final Payment for services or in the event of termination of this Agreement, shall, in each instance, operate as and be a release to the Town and every member and agent thereof, from all claims and liabilities to the Designer for everything done or furnished for or relating to the work, and for any act or neglect of the Town or of any person relating to or affecting the work and shall constitute a waiver of all claims by the Designer except those previously made in writing and identified by the Designer as unsettled at the time of the Final Request for payment.

6.6 **Non-appropriation of funds:** 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 of Andover. The Town may immediately terminate or suspend this Agreement in the event that the appropriation(s) funding this Agreement is terminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Agreement.

## **Section 7. Changes in Services**

7.1 All changes in the scope of the Services shall be effected by written instrument signed by both the Town and the Designer. In no event shall the Town be required to accept and/or pay for

any Services beyond the scope of the Services set forth and attached hereto unless the same is set forth in a written instrument signed by the Town and the Designer, nor shall the Town be required to pay more for any such change in the scope of the Services than is stated in such agreed upon written instrument. The Town anticipated scope of services is attached however, the scope of this project may be reduced or cancelled at the discretion of the Town for any reason.

7.2 In accordance with M.G.L. c.7C, sec. 51, the Designer or its sub-Designers or sub-contractors shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the bid documents, as reasonably determined by the Town Manager.

## **Section 8. Insurance**

- 8.1 The Designer shall obtain and maintain the following insurance:
  - 8.1.1 Workers Compensation Insurance of the scope and amount required by the laws of the Commonwealth of Massachusetts.
  - 8.1.2 Broad Form Commercial General Liability insurance with limits of at least \$1 Million per occurrence and \$2 Million aggregate, more such higher amount as the Town may require, and which shall cover bodily injury, death, or property damage arising out of the work.
  - 8.1.3 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.
  - 8.1.4 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, while coverage may be maintained for a period of at least three (3) years after the date of 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.
  - 8.1.5 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.

- 8.1.6 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.
- 8.2 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 the 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.
- 8.3 The above-referenced Liability policies, (General , Auto, and Workers Comp.) shall include a Waiver of Subrogation endorsement in favor of the Town. The certificate of insurance shall so state the foregoing.
- 8.4 The General Liability and Automobile Liability policies shall be written on an occurrence basis.
- 8.5 The Contractor shall maintain all required insurance in full force and effect as required by the Contract or the Contractor shall be in material breach thereof.
- 8.6 Coverages are to be maintained for a period of 3 years after final payment.
- 8.7 Contractual liability must recognize the indemnities contained in this Agreement.

## **Section 9. Indemnification**

9.1 For claims arising out of or relating to errors and omissions in the performance of professional services rendered by the Designer, to the fullest extent permitted by law, the Designer shall indemnify and hold harmless the Town and its officers and employees from and against all claims, damages, liabilities, inquiries, costs, fees,, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may

be incurred by the Town to the extent caused by the negligence of, or the breach of this Contract by, the Designer or a person employed by the Designer or Subconsultant for whom the Designer is responsible under this Contract.

9.2 For all other claims, to the fullest extent permitted by law, Designer shall defend, indemnify and hold harmless the Town and their officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Town to the extent they result from the performance of its services provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are attributable to bodily injury or death or injury to or destruction of tangible property and are caused by an act or omission of the Designer or a person or Subconsultant whom the Designer is responsible under this Contract.

9.3 The existence of insurance shall in no way limit the scope of the Designer's indemnification under this Agreement. 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 shall not be defeated or in any way undermined by the utterance of claims not covered by this Agreement.

**Section 10. Notices** All reports and payments, together with all notices and other communications required to be given under the terms of this Agreement, shall be made in writing and shall be deemed to have been made and given if mailed by certified mail, sent by overnight courier, transmitted by electronic facsimile or hand delivered to the party to receive such notice, addressed as follows:

To the Town:

Director of Public Works  
Municipal Services Building  
5 Campanelli Drive  
Andover, MA 01810  
And

With a copy to:

Andrew Flanagan  
Town Manager  
Town Of Andover  
Town Offices  
36 Bartlet Street  
Andover, MA 01810

To Designer:

**Section 11. Confidential and Proprietary Information; the Ownership of Documents**

11.1 Any materials, reports, information, data, etc. given to or prepared or assembled by the Designer under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Designer (except agents, servants, or employees of the Designer) without the prior written approval of the Town, except as otherwise required by law. The Designer shall comply with the provisions of Chapter 66 and 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 Designer'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 Designer agrees and hereby grants to the Town an irrevocable royalty-free license to all such data which the Designer 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 Town acknowledges that these documents are project/site specific. The Designer shall not be responsible for changes made to the documents and use by parties other than the Town without the Designer'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. The Town shall have access at all reasonable times to inspect and make copies of all said materials in the Designer's possession pertaining to the Project and the services provided by the Designer under this Agreement. All of the Town's rights hereunder shall survive any cancellation, termination or inspection of this Agreement.

11.2 All information acquired by the Designer from the municipality or from others at the expense of the municipality in performance of the Agreement, shall be and shall remain the property of the municipality. All records, data files, computer records, work sheets, deliverable products complete and incomplete, and all other types of information prepared or acquired by the Designer for delivery to the Town shall be and shall remain the property of the Town upon payment thereof.

11.3 The Designer agrees that it will use this information only as required in the performance of this Agreement and will not, before or after the completion of this Agreement otherwise use said information, nor copy, not reproduce the same in any form except pursuant to the sole written instructions of the Town, provided that the Designer shall be permitted to retain a copy of such information for purposes of documenting the Services.

## **Section 12. Default and Delays**

12.1 If the Designer defaults or neglects to carry out the Services in accordance with this Agreement or fails to perform any provision of this Agreement, the Town may, after five days' written notice to the Designer and without prejudice to any other remedy it may have, make good

such deficiencies and may deduct the cost thereof from the payment then and thereafter due the Designer or, at its option, may terminate this Agreement.

12.2 The Designer hereby agrees that it shall have no claim for damages of any kind on account of any delay in the commencement of the Services and/or any delay or suspension of any portion of the Services, whether such delay is caused by the Town or otherwise.

### **Section 13. Subcontracts**

13.1 The Designer shall not delegate any of its duties hereunder, except to competent and reliable sub-Designers and sub-contractors approved in advance and in writing by the Town.

13.2 Requests for approval of Services to be delegated by the Designer must include a clear description of the work to be performed and the capabilities of the sub-Designers/sub-contractors to perform such work. If requested by the Town, copies of executed contracts between Designer and sub-Designers/sub-Designers or for any other work delegated by the Designer shall be delivered to the Town immediately after such execution.

13.3 The Designer represents that it has made and will make reasonable investigation of all subcontractors to be utilized in the performance of work under this Agreement to determine that they possess the skill, knowledge and experience necessary to enable them to perform the Services required. Nothing in this Agreement shall relieve the Designer of its prime and sole responsibility for the performance of the Services under this Agreement and the Designer shall remain liable for all work performed by itself or any sub-Designer/sub-contractor or other person performing Services under the authority of the Designer.

13.4 When the Designer receives payment from the Town, the Designer shall promptly and within any applicable time period required by law make payment to each subdesigner/subcontractor whose work included the work for which such payment was received from the Town. The Town shall have the right to investigate any breach of a subdesigner/subcontractor's contract and to take corrective measures necessary for the best interest of the Town.

**Section 14. No Third Party Beneficiary** All of the provisions of this Agreement are solely for the benefit of the parties hereto, and none of the other provisions of this entire Agreement shall inure to the benefit of any person not a party to the Agreement, and third parties shall have no rights hereunder.

### **Section 15. Records**

15.1 The Designer shall cause to be maintained accurate and detailed records of all time devoted to the project by the Designer and each subdesigner/subcontractor employed by the Designer. The Designer agrees that the Town and the Commonwealth of Massachusetts, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Designer which are directly pertinent to the project for the purposes of making audit, examination, excerpts, and transcriptions.

15.2 The Designer shall maintain all records involved with this Agreement for a period of six (6) years after the Town makes Final Payment and all pending matters are closed.

15.3 It is understood that authorized representatives of the Town may inspect or review all written materials and work in progress during normal working hours. In order that all written materials may be readily available for conference and periodic inspection by said representatives, all Services involving the production of any written materials shall be performed in adequately staffed architectural and engineering office(s) located within the confines of the Commonwealth of Massachusetts.

**Section 16. Liability of Town** The liability of the Town under this Agreement is limited to the compensation provided herein, and shall in no event include liability for incidental, special or consequential damages, or lost profits, or for damages or loss from causes beyond the Town's reasonable control.

**Section 17. Assistance in Claims and/or Litigation**

17.1 The Designer shall render assistance to the Town in claims and/or litigation in connection with or arising out of this Agreement, including without limitation, any claims and/or litigation involving a Contractor or its subcontractors; and any claims and/or litigation brought by or against the Town and any third parties, by providing only for the Town technical information, analyses and expert witnesses. The Designer shall provide such services at a mutually agreed upon and reasonable rate, except those Services which are required under this Agreement or are necessitated by the alleged acts, errors or omissions of the Designer, all of which shall be provided at no cost to the Town.

**Section 18. Discrimination Prohibited**

18.1 In all hiring or employment made possible by or resulting from this Agreement, (1) there will not be any discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin, and (2) affirmative action will be taken to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

18.2 No person in the United States shall, on the ground of race, color, religion, sex or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement. The Designer will comply with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964.

**Section 19. Certifications Required by Law** The Designer, by executing this Agreement, certifies the following:

(a) it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement for design services;

(b) that no Designer or subcontractor to the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the sub-Designer/ sub-contractor of a contract by the Designer;

(c) that no person, corporation or other entity, other than a bona fide full time employee of the Designer, has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining this Agreement for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Designer; and

(d) that the Designer has internal accounting controls as required by M.G.L. c. 30, sec. 39R, and has filed and will continue to file an audited financial statement required by subsection (d) of said Section 39R or said Chapter 30, and that the Designer will:

- (1) maintain accurate and detailed accounts for a six-year period after the Final Payment;
- (2) file with the Town regular statements of the Designer concerning internal auditing controls;
- (3) file with the Commissioner of Capital Planning and Operations an annual audited financial statement prepared by an independent certified public accountant; and
- (4) for any contract which is for an amount or estimated amount greater than one hundred thousand dollars (\$100,000.00), as defined in M.G.L. c. 30, sec. 39R, submit a statement upon the execution of this Agreement from an independent certified public accountant that such CPA (or public accountant) has examined the Designer's internal auditing controls and expresses an opinion as to their consistency with the Designer's statements in (2) above and whether such statements are reasonable with respect to transactions and assets that are substantial in relation to the Designer's financial statements. (M.G.L. c. 30, sec. 39R).

(e) that the Designer, and any sub-Designer/subcontractor to the Designer, represents, warrants and certifies that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes and all by-laws, rules and regulations of the Town of Andover relating to taxes, fees and charges, or is lawfully contesting the validity of the same. The Designer, and any sub-Designer/sub-contractor to the Designer, further represents, warrants and certifies that it will remain

in such compliance during the term of this Agreement, including any amendments or extensions hereto.

Breach of any of the foregoing provisions shall be deemed a material breach which shall entitle the Town to immediately terminate this Agreement and take any other action authorized by law.

## **Section 20. Conflict of Interest**

20.1 The Designer warrants that it has complied with all provisions of law regarding the award of this Agreement and that it, or its employees, agents, officers, directors or trustees have not offered or attempted to offer any thing of any value to any employee of the Town in connection with this Agreement.

20.2 The Designer further warrants that no employee of the Town of Andover, including unpaid members of Town boards and commissions, serves as an officer, director, trustee or employee of the Designer, and that no employees of the Town of Andover have or will have a direct or indirect financial interest in this Agreement.

20.3 Both the Town and the Designer acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Agreement expressly prohibits any activity which shall constitute a violation of that law. The Designer 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 Designer certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

20.4 Violation of this Section shall be a material breach of this Agreement and shall be grounds for immediate termination of this Agreement by the Town without regard to any enforcement activities undertaken or completed by any enforcement agency. Termination of this Agreement pursuant to this Section shall not waive any claims for damages the Town may have against the Designer resulting from the Designer's violation of the terms of this Section.

## **Section 21. Termination; Survival of Covenants**

21.1 Notwithstanding any other provision of this Agreement, the Town reserves the right at any time in its absolute discretion to suspend or terminate this Agreement in whole or in part for its convenience upon written notice to the Designer. If any portion of this Agreement so suspended is not recommenced by written notice of the Town within the time period specified in the written notice of suspension, the suspended portion of this Agreement shall be thereupon deemed terminated as to that portion for the convenience of the Town in accordance with this provision. The Town shall incur no liability by reason of such termination except for the obligation to pay compensation for all Services performed to the termination date, which obligation shall not exceed the limits established

under each Phase of the Services as to which the Town has expressly authorized the Designer to proceed.

21.2 Upon receipt of any such notice or suspension or termination, the Designer shall (a) discontinue all Services affected (unless the notice directs otherwise); and (b) deliver to the Town all records, data, drawings, specifications, reports, estimates, summaries, and such other information and materials, whether completed or in process, as may have been accumulated by the Designer in performing this contract.

21.3 If the Designer shall fail to fulfill in a timely and satisfactory manner its obligations under this agreement, or if the Designer shall violate any of the covenants, conditions, or stipulations of this agreement, which failure or violation shall continue for seven (7) business days after written notice of such failure or violation is received by the Designer, then the Town shall thereupon have the right to terminate this agreement by giving written notice to the Designer of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination.

21.4 Any termination or suspension of this Agreement shall not impair the right of the Town to recover damages occasioned by the fault of the Designer. Any suspension shall not limit the right of the Town to terminate this Agreement.

21.5 All of the Designer's covenants and obligations hereunder shall survive the termination or expiration of this Agreement.

**Section 22. Ineligibility** Further design services and construction administration services beyond the scope of this agreement shall only be performed upon written agreement of the parties, and shall be in compliance with the statutory requirements for designer selection under Chapter 7C of the Massachusetts General Laws.

**Section 23. Entire Agreement, Interpretation, Governing Law**

23.1 This Agreement is the exclusive statement of the agreement of the parties with respect to its subject matter and supersedes all prior agreements, negotiations, representations, proposals and awards, written or oral, relating to its subject matter.

23.2 Headings, titles and paragraph captions are inserted in this Agreement for convenience, are descriptive only and shall not be deemed to add to or detract from or otherwise modify the meaning of the paragraphs.

23.3 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

23.4 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

23.5 The term, "hereof", "herein" and "hereunder", and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular section, paragraph or provision, unless expressly so stated.

23.6 All words or terms used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require.

23.7 This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such document to be drafted or prepared.

23.8 Time is of the essence for the performance and payment of each and every covenant and obligation contained herein.

23.9 No amendment of this Agreement shall be effective unless the same is made in writing and signed by the parties hereto.

23.10 The terms "person" and "persons" used herein shall include natural persons and corporations, partnerships (general and limited), firms, associations, trusts, estates, bodies politic, political subdivisions and other entities and organizations.

23.11 Each and every provision of law and governmental regulation required by law to be inserted in an agreement such as this or in any of the contract documents shall be deemed to be inserted herein or therein and this Agreement shall be read and shall be enforced as though so included therein, and if through mistake, inadvertence or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement shall be deemed to be amended to make such insertion or correction.

#### **Section 24. Assignment**

24.1 The Town shall have the right to assign this Agreement to (i) any other person or entity succeeding to the Town's ownership of the Project or property which is the subject of the Designer's work hereunder, or (ii) to any other person or entity having or acquiring an interest therein, including, without limitation, any lending institution.

24.2 Designer shall not assign, pledge or hypothecate this Agreement or any monies due hereunder.

#### **Section 25. Legal Requirements**

##### **25.1 Non-resident Processing; Signatures**

Every Designer who is a nonresident of the Commonwealth of Massachusetts, or a non-resident co-partner of a Designer, hereby appoints the Secretary of the Commonwealth of Massachusetts and his successor in office to be its true and lawful attorney in and for Massachusetts,

upon whom all lawful processes in any action or proceeding arising out of this contract may be served. When legal process against any such person is served upon the Secretary of State, a copy of such process shall forthwith be sent by registered mail with a return receipt requested by the Town or its lawful Attorney to said Designer or non-resident co-partner at the address set forth in the contract. Said Designer or said non-resident co-partner hereby stipulates and agrees that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on said Designer or said co-partner. Such authority shall continue in force so long as any liability remains outstanding against said Designer or said co-partner.

#### 25.2 Anti-Boycott Covenant (Executive Order #130)

The Designer warrants, represents and agrees that during the time this contract is in effect, neither it nor any affiliated company, as hereafter defined, will participate in or cooperate with an international boycott, as defined in Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by General Laws Chapter 151E, sections 2 and 3. If there shall be a breach in the warranty, representation and agreement contained in this paragraph, then without limiting such other rights as it may have, the Town shall be entitled to rescind this contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Designer, or by a person or persons, or business entity or entities, directly or indirectly owning at least 51% of the ownership interests of the Designer.

#### 25.3 Equal Employment Opportunity Anti-Discrimination Program

During the performance of this agreement, the Designer, for its assignees, and successors in interest, agrees as follows:

- a. The Designer, in the performance of all work after award and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rental of equipment. Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).
- b. The Designer by signing this Agreement agrees to abide by the above paragraph to the best of its ability.

**Section 26. Choice of Law** This Agreement shall be construed under and governed by the laws and regulations of the Commonwealth of Massachusetts, and the Town of Andover. The Designer, and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which the Town is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This paragraph shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.

**Section 27. Waivers** The provisions of this Agreement can be waived only by written agreement, except where otherwise stated herein. Forbearance or indulgence by a party shall not be construed as a waiver, nor in any way 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.

**Section 28. Amendments** No amendment to this Agreement shall be effective unless it is executed in writing by authorized representatives of both parties.

**Section 29. Severability** If any provision of this Agreement is declared or found illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Agreement shall be enforced to the fullest extent permitted by law.

**Section 30. Designer' Contract Supplementary Data**

30.1 No changes are to be made to the information provided by the Designer in this Section at any time during the life of this contract without written notification to the Town and when required, receipt of written approval by the Town.

30.2 No contract to provide Designer services shall be awarded by the Town, or by any department, board, commission, or other agency acting in its behalf, unless the person signing such contract on behalf of the party contracting to provide such services files with the Town a statement under the penalties of perjury setting forth the names and addresses of all persons having a financial interest therein, not including, however, any person whose only financial interest therein consists of the holding of one percent or less of the capital stock of a corporation contracting to provide such services.

NOTE: Individuals who sign a contract in their own behalf must also complete the certification below as well as sign the contract. For the purpose of this directive, the term "person having a financial interest" will generally refer to any person who, in some direct manner, will benefit financially from a given contractual relationship with the Town. However, this may not, in every case, preclude the possibility of an existing financial interest within the meaning of the statute where a financial benefit is to be realized in some indirect manner. Where doubts arise in a specific case, it is advisable that names and addresses be included.

By signing this Contract, the Designer certifies under the penalties of perjury that the following sets forth the names and addresses of all persons having a financial interest in this contract:

Name \_\_\_\_\_ Address \_\_\_\_\_

Not applicable for anyone having a financial interest.

3. By signing this Contract, the Designer certifies under the penalties of perjury that the following named (Principal) is registered by the Commonwealth as a Landscape Architect pursuant to the provisions of General Laws Chapter 112, sections 60A through 60O

(architects), sections 81D through 81T (professional engineers and land surveyors), or sections 99 through 107 (registered landscape architects).

Name	Title	Mass. Registration No.
<u>Brandon Kunkel</u>	<u>Practice leader</u>	<u>4040</u>

NOTE: The above information must be completed to also comply with the provisions of General Laws Chapter 7C, section 51.

4. By signing this contract, the Designer certifies under the penalties of perjury that the following named (Principal) is the designated officer of the firm contracted for the:

IF A CORPORATION: (Name Officers and Titles)

Brandon Kunkel, Practice Leader

IF A PARTNERSHIP: (Name of all Partners)

IF AN INDIVIDUAL: (Name of Owner):

MASSACHUSETTS REGISTERED PRINCIPAL OF FIRM RESPONSIBLE FOR THIS PROJECT IS: Brandon Kunkel (Notify Office of any changes)

5. By signing this contract, the Designer certifies under the penalties of perjury that 1) in accordance with Chapter 7C, section 51, the Designer has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services; and 2) that no Designer to or subcontractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Designer or subcontractor of a contract by the Designer; and 3) that no person, corporation or other entity, other than a bona fide full-time employee of the Designer has been retained or hired by the

Designer to solicit for or in any way assist the Designer in obtaining the contract for services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the Designer; 4) the undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person, and that 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.

6. By signing this contract, the Designer certifies under the penalties of perjury that pursuant to General Laws Chapter 62C sec. 49A, the Designer 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 Designer has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions.
7. By signing this contract, the Designer 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.
8. By signing this contract, the Designer certifies under the penalties of perjury that the following is a listing of at least the five (5) most recent existing contracts or other sources of income derived by (*Firm Name*):

\_\_\_\_\_ from the Commonwealth or any political subdivision thereof or public authority therein, from the Federal Government or any agency thereof, and from any governmental source for services rendered:

Contract Awarding Authority	Present Status Description	Fee Percentage	Fee of Fee Received	Anticipated
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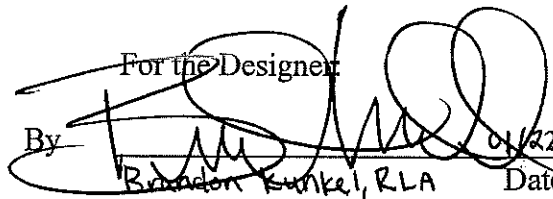
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9. By signing this contract, the Designer certifies under the penalties of perjury that, if the Designer is a corporation, the Corporation has filed with the State Secretary all certificates and annual reports required by Chapter 156B, section 109 (Business Corporation), by Chapter 181, section 4 (Foreign Corporation), or by Chapter 180, section 26A (Non-Profit

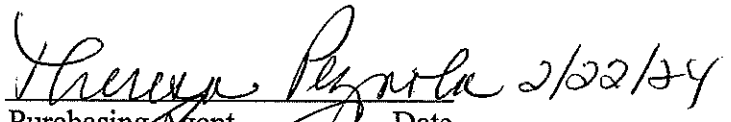
Corporation) of the Massachusetts General Laws.

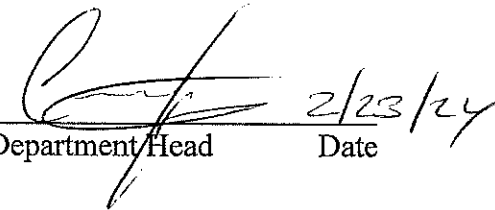
10. By signing this contract, the Designer certifies under the penalties of perjury that, the Designer is not currently debarred or suspended by the Commonwealth of Massachusetts, or any of its entities or subdivisions, under any Commonwealth law or regulation, including but not limited to M.G.L. c. 29 s. 29F and M.G.L. c. 152 s. 25C.
11. By signing this contract, the Designer certifies under the penalties of perjury that, the Designer is aware of the American with Disabilities Act which prohibits discrimination based upon disability and shall meet the standards applicable to the state under the American with Disabilities Act 42 USC 12101 et seq.; 28 CFR Part 35, as amended.

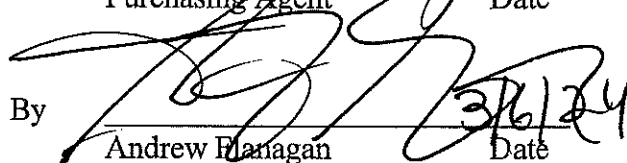
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

For the Designer  
By:  01/22/24  
Brandon Kunkel, RLA Date

For the Town:

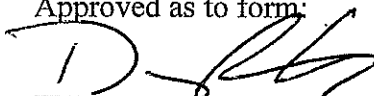
By:  2/22/24  
Purchasing Agent Date

By:  2/23/24  
Department Head Date

By:  3/6/24  
Andrew Flanagan Date

Town Manager  
Town Offices  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810

Approved as to form:

  
Douglas Heim, Town Counsel

As to the availability of funds:

  
Town Accountant

Acct. 623104-5700




**MASSACHUSETTS REGISTERED PRINCIPAL OF FIRM RESPONSIBLE FOR THIS PROJECT IS: Brandon Kunkel**

In accordance with M.G.L. Chapter 7C, Section 51, I further certify that the DESIGNER has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services; no Designer to or subcontractor for the DESIGNER; and no person, corporation or other entity, other than a bonafide full-time employee of the DESIGNER, has been retained or hired by the DESIGNER to solicit for, or in any way assist, the DESIGNER in obtaining the contract for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the DESIGNER. I also certify that under the pains and penalties of perjury that the Designer has not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the contract. 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.

Furthermore, the Designer certifies under the penalties of perjury that throughout the duration of the contract, it will not have any financial relationship in connection with the performance of this contract with any materials manufacturer, distributor or vendor.

Signed under the pains and penalties of perjury this 22 day of January, 2024

By:   
Name: Brandon Kunkel, RLA  
Designer





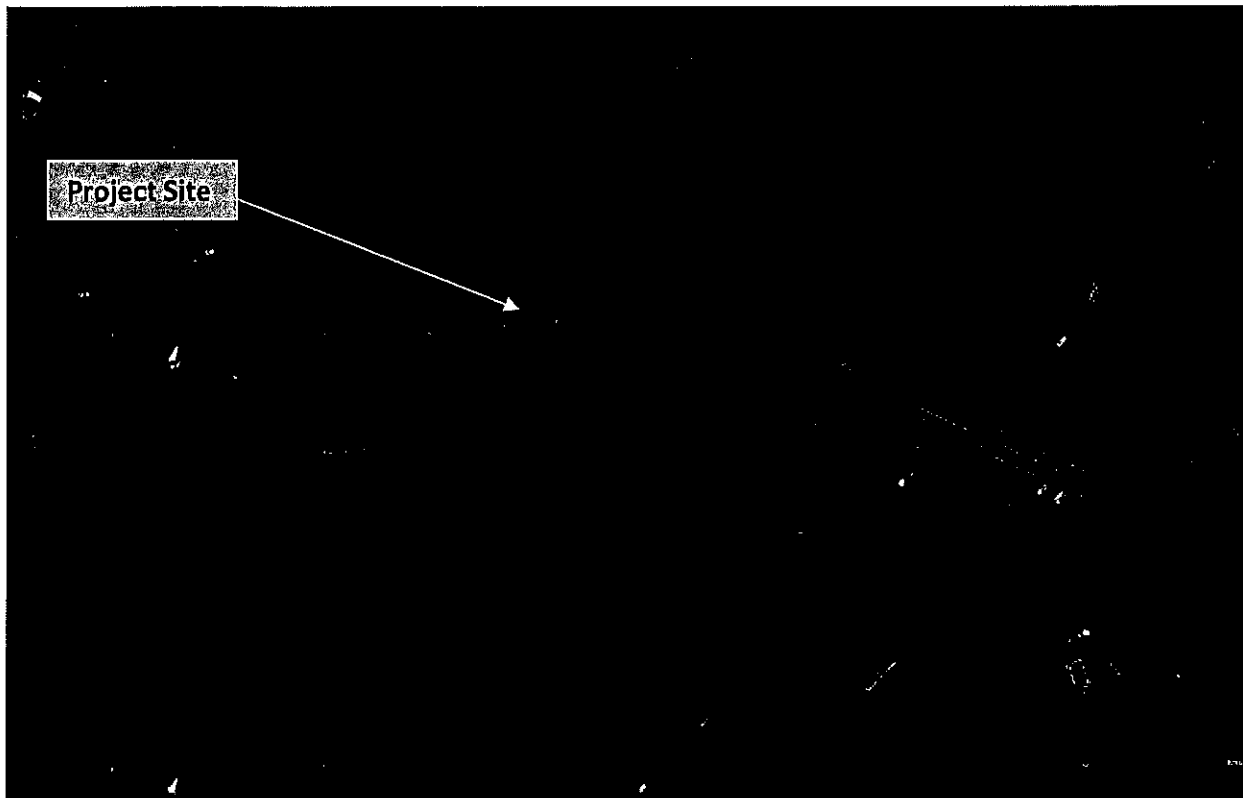
January 15, 2024  
Revised January 17, 2024

Ms. Theresa Peznola  
Chief Procurement Officer  
Town of Andover  
36 Bartlet Street  
Andover, MA 01810

Re: Andover Dog Park  
Subject: Designer Services

Dear Ms. Peznola:

Weston & Sampson is pleased to submit this proposal to provide designer services for a new dog park to be constructed off High Plain Road (see image below) Our work would be provided in four basic phases as follows:



To construct the dog park, Weston & Sampson will provide:

- o Site survey and Baseplan Development
- o Preliminary Design
- o Final Design / Contract Documents

- *Permitting (NOT included but able to be provided separately if required)*
- Bidding Assistance and Recommendation of Award
- *Construction Administration (NOT included but able to be provided separately if wanted)*

The scope of actual site improvements will be consistent with the concept diagram and estimate contained within the prepared Stanton Foundation Grant Application. Site improvements generally include:

- Perimeter fencing and entry/maintenance gates.
- Two zones for large and small dogs
- Surfacing and drainage accommodations
- Concrete pathway/plaza space
- Parking area
- ADA accessible paths and parking space(s)
- Water service with 2 faucets
- Accessible dog/human fountain
- Bulletin board and informational/park use signage
- Benches and trash receptacles
- Large and small dog intermediate play equipment
- Other miscellaneous improvements

Specific work tasks, to be provided in two separate phases shall include:

#### **Task A: Site Survey and Baseplan Development**

We will develop a baseplan from the Town provided survey, supplemental GIS mapping or other record documentation to be furnished by the Town. Weston & Sampson can perform a site specific topographic and detail survey to supplement necessary information specific to the final dog park design that may be required as discussed during our phone call on Friday, January 12, 2024. We will coordinate with Town staff to identify the limits of required survey.

#### **Task B: Preliminary Design**

Weston & Sampson will prepare one (1) preferred preliminary design plan and an opinion of probable cost estimate for the desired dog park improvement program. We will coordinate with town staff and dog park supporter groups in relation to development of the preferred plan.

In general, during this task, Weston & Sampson will work with Town representatives to confirm the extent of the project area, develop a preferred preliminary design based on the minimum requirements of the Stanton Foundation. The intent is that the preferred plan is to be presented to the public in one (1) virtual engagement meeting. Upon the conclusion of this phase, the scope and design of all improvements will be set, and the preparation of final designs/contract documents will commence.

Specifically, Weston & Sampson will be available to present at one (1) public meeting total during the Preliminary Design Task. Leading up to the meeting, Weston & Sampson will present one (1) preferred plan to Town representative(s) in advance of a public meeting for review and approval. Weston & Sampson will then present the approved plan to the public in a virtual meeting for comment. Weston & Sampson will compile public comments and incorporate them into a final preferred Preliminary Design site plan and develop an opinion of probable cost estimate. Weston & Sampson will develop a high-end illustrative plan graphic plan for the public engagement meeting and make all information developed during this task available in electronic format for use by the Town.

Our assumption is that the project will be constructed within upland areas, outside of regulatory limits of the

local and state jurisdictional entities. Should this not be the case, based on design preferences or otherwise, we are able to provide a separate scope of work and a cost proposal for any required permit related services. No permitting is included within this scope of work.

### **Task C: Final Designs / Contract Documents**

Upon the receipt of preliminary design approvals, final designs, and contract documents, including plans, details, specifications, and opinion of probable cost estimates will be prepared. When substantially complete, the documents will be submitted for your review and consideration. We anticipate that these design documents will represent a 100% complete level. Typical final design contract documents include:

- Existing Conditions Plan (Survey)
- Site Preparation and Demolition Plan
- Layout and Materials Plan
- Grading, Drainage, and Utility Plan
- Site Construction Details
- Technical Specifications
- Opinion of Probable Cost

After the receipt of final comments from town representatives, we will prepare the final bid documents and furnish these (plans and technical specifications) in paper and electronic formats. Weston & Sampson assumes the Town will furnish the front-end template for bidding and contract purposes and has NOT included it within this scope of work.

### **Task D: Bid Assistance and Recommendation of Award**

Weston & Sampson will be available to attend one (1) pre-bid conference meeting at the site and to answer the inquiries of prospective bidders during the bid period. We will furnish all information needed to issue any required Addenda. Upon the receipt of bids, Weston & Sampson will coordinate with Town representatives and make a recommendation of award.

We have NOT included construction phase services as part of this proposal for your consideration. Should project proponents desire, Weston & Sampson is available to provide construction administration services, and this would include attendance at a pre-construction meeting, processing of pay requisitions and shop drawing reviews/approvals, attendance at construction meetings and issuance of a corresponding construction meeting notes.

### **Project Schedule - DRAFT**

Weston & Sampson understands that the Town desires to commence construction in June of 2024 to be able to meet the Stanton Foundation Grant requirements, as result this is an expedited schedule to meet this timeline. We provide the following schedule for consideration for the schedule to be achieved:

- Notice to Proceed / Execution of the design services contract: January 26, 2024
- Task A Site Survey and Baseplan Development: February 9, 2024
- Task B Preliminary Design: March 8, 2024
  - Public Meeting: February 20, 2024
- Task C: Final Design / Contract Documents: April 12<sup>th</sup>
- Task D: Bid Assistance and Recommendation of Award: April 15 – April 29, 2024
  - Bids Due: April 29<sup>th</sup>
- Executed Contract / NTP: May 27, 2024
- Commence Construction: June 3, 2024

**Scope Fee**

The fee schedule associated with the scope of work is included below:

Design Task	Fee
Task A: Site Survey and Baseplan Development	\$3,400
Task B: Preliminary Design	\$8,000
Task C: Final Design / Contract Documents	\$12,000
Task D: Bid Assistance and Recommendation of Award	\$1,600
<b>TOTAL FEE</b>	<b>\$25,000</b>

(\*) all work to meet Stanton Foundation Grant requirements.

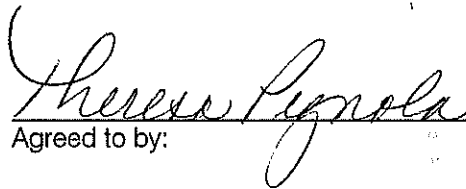
If you agree with the scope and fee described herein, please sign and date where indicated below and return one copy for our records. Thank you for the opportunity to be of continued service to the Town of Andover.

Yours very truly,

WESTON & SAMPSON



Brandon Kunkel, RLA  
Practice Leader

 1-17-24  
Agreed to by: \_\_\_\_\_ Date