







AECOM Project Number \_\_\_\_\_  
AECOM Project Name: Final Design of Downtown Area  
Sewer Collection System Treatment Facility and Effluent  
Disposal Site

### ENGINEERING SERVICES AGREEMENT

This Engineering Services Agreement ("Agreement") effective this 30th day of August, 2018, is by and between the Town of Orleans, Massachusetts ("Client"), and AECOM Technical Services, Inc., a California corporation, ("AECOM"); each also referred to individually as ("Party") and collectively as ("Parties").

In consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

#### 1. SCOPE OF SERVICES

1.1 AECOM shall perform the services set forth in **EXHIBIT A** ("Services"), incorporated herein by reference.

1.2 AECOM will provide the work products ("Deliverables") in accordance with the schedule ("Project Schedule"), if applicable, as set forth in **EXHIBIT A**. The Project Schedule will be updated following the initial project kick-off meeting and at other times as necessary throughout the Project Duration.

2. **TERM OF AGREEMENT** - Upon execution by the Parties, this Agreement shall have the effective date set forth above. This Agreement shall remain in force until all obligations related to the Services, other than those obligations which survive termination of this Agreement under Article 22, have been fulfilled, unless this Agreement is sooner terminated as set forth herein.

3. **COMPENSATION AND PAYMENT** - AECOM shall be paid for the performance of the Services in accordance with **EXHIBIT B** ("Compensation and Payment"), incorporated herein by reference.

4. **NOTICE** - All notices, requests, claims, demands and other official communications herein shall be in writing. Such notices shall be given (i) by delivery in person, (ii) by a nationally recognized commercial courier service; or (iii) by United States Postal Service, registered mail, postage prepaid and return receipt requested. Notices shall be effective upon actual delivery to the other Party at the following addresses:

#### TO CLIENT:

Town of Orleans, MA  
19 School Road  
Orleans, MA 02653  
Attn: John Kelly, Town Administrator

#### TO AECOM:

9 Jonathan Bourne Road  
Pocasset, MA 02559  
Attn: Thomas Parece, P.E. Project Manager

Claims-related notices shall be copied to:  
Chief Counsel, Americas Design and Consulting Services  
515 South Flower Street, Suite 1050  
Los Angeles, CA 90071

or to which address the receiving Party may from time to time give notice to the other Party. Rejection or other refusal to accept, or the inability to deliver because of changed address for which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal to accept, or inability to deliver.

## 5. AECOM'S RESPONSIBILITIES

- 5.1 AECOM shall perform the Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in the same location under comparable circumstances and as expeditiously as is consistent with professional skill and the orderly progress of the Project. The full extent of AECOM's responsibility with respect to the Services shall be to perform in accordance with the above standards and to remedy any material deficiencies or defects in the Deliverables at AECOM's own expense, provided that AECOM is notified by Client, in writing, of any such deficiency or defect within a reasonable period after discovery thereof, but in no event later than 90 days after AECOM's completion or termination of the Services. AECOM MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, INFORMATIONAL CONTENT OR OTHERWISE.
- 5.2 AECOM will endeavor in good faith, as needed, to obtain from the appropriate authorities their interpretation of applicable codes and standards and will apply its professional judgment in interpreting the codes and standards as they apply to the Project at the time of performance of the Services. Notwithstanding the above, the Parties agree that, as the Project progresses, such codes or standards may change or the applicability of such codes or standards may vary from AECOM's original interpretation through no fault of AECOM and that additional costs necessary to conform to such changes or interpretations during or after execution of the Services will be subject to an equitable adjustment in the Compensation and Project Schedule.
- 5.3 AECOM shall be responsible for its performance and that of AECOM's lower-tier subconsultants and vendors. However, AECOM shall not be responsible for health or safety programs or precautions related to Client's activities or operations or those of Client's other contractors and consultants or their respective subcontractors and vendors ("Contractors"). AECOM shall have no responsibility for (i) Construction means, methods, techniques, sequences or procedures; (ii) for the direction of Contractors' personnel; (iii) selection of Construction equipment; (iv) coordination of Contractors' work; (v) for placing into operation any plant or equipment; or (vi) for Contractors' failure to perform the work in accordance with any applicable Construction contract. AECOM shall not be responsible for Client's pre-existing site conditions or the aggravation of those preexisting site conditions to the extent not caused by the negligence or willful misconduct of AECOM. AECOM shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client, Contractors or others at project site ("Project Site") other than AECOM's employees, subconsultants and vendors. So as not to discourage AECOM from voluntarily addressing health or safety issues while at the Project Site, in the event AECOM does identify such issues by making observations, reports, suggestions or otherwise, AECOM shall have no authority to direct the actions of others not under AECOM's responsibility and control and shall have no liability, responsibility, or affirmative duty arising on account of AECOM's actions or forbearance.
- 5.4 Notwithstanding anything contained in this Agreement, AECOM shall have no responsibility for the discovery, presence, handling, removal, transportation, storage or disposal of, or exposure of persons to hazardous materials in any form related to the Project.
- 5.5 AECOM shall bear no responsibility for the Construction work to be performed ("Work"), including without limitation, (i) the Construction means, methods, techniques, sequences, or procedures; (ii) the direction of Construction personnel; (iii) selection of Construction equipment; (iv) the allocation of space where the Work is being performed ("Project Site"); (v) placing into operation any plant or equipment; or (vi) quality control of the Work. In addition, AECOM shall not be responsible for and shall have no authority to exercise any control over Owner's employees, contractors, consultant and vendors, or their respective officers, directors, employees, representatives, lower-tier subcontractors, agents or invitees ("Construction Team").

- 5.6 AECOM shall not be responsible for Construction observation or for reporting or correcting health or safety conditions or deficiencies relating to the Work or for the conditions at the Project Site. However, so as not to discourage AECOM from voluntarily addressing health or safety issues while at the Project Site, in the event AECOM does observe potential health or safety issues, AECOM may bring such health and safety issues to the attention of Owner and, where appropriate, may bring such observations to the attention of the Construction Team. In the event that AECOM makes such observations, reports, suggestions or otherwise brings attention to the potential health and safety issue, AECOM shall have no authority to stop the performance of the Work and shall bear no liability or assume any affirmative duty relating to such health and safety issue.
- 5.7 In the event that the Services include construction observation or similar field services, AECOM's responsibility shall be limited to determining general conformance with AECOM's design. Visits by AECOM to the Project Site and observations made by AECOM shall not relieve the Construction Team of its obligation to conduct comprehensive inspections of the Work sufficient to ensure conformance with the intent of the construction contract documents, and shall not relieve the Construction Team of its responsibility for means, methods, techniques, sequences and procedures necessary for coordinating and completing all portions of the Work and for all safety precautions incidental thereto.
- 5.8 Any opinions of probable construction costs provided by AECOM represent AECOM's good faith professional judgment in light of its experience, knowledge and the information reasonably available to AECOM at the time of preparation of the opinion. However, since AECOM has no control over the market, economic conditions or the bidding procedures, AECOM, its directors, officers and employees and subconsultants do not make any guarantees or warranties whatsoever, whether express or implied, with respect to such opinions and accept no responsibility for any loss or damage arising therefrom or in any way related thereto. Third parties relying on such opinions do so at their own sole risk.
- 6. CLIENT'S RESPONSIBILITIES**
- 6.1 Client shall provide in writing any specific Client requirements or criteria for the Project.
- 6.2 Client shall furnish to AECOM all information and technical data in Client's possession or control reasonably required for the proper performance of the Services. AECOM shall be entitled to reasonably rely without independent verification upon the information and data provided by Client or obtained from generally accepted sources within the industry, except to the extent such verification by AECOM is expressly required as a defined part of the Services.
- 6.3 Client shall arrange for access and make all provisions necessary for AECOM to enter upon public and/or private property as required for AECOM to properly perform the Services. Client shall disclose to AECOM any known or suspected hazards at the Project Site which may pose a threat to human health, property or the environment.
- 6.4 If any document or inquiry requires Client to approve, comment, or to provide any decision or direction with regard to the Services, such approval, comment, decision or direction shall be provided within a reasonable time within the context of the Project Schedule, or if not identified in the Project Schedule, within a reasonable time to facilitate the timely performance of the Services.
- 7. INDEPENDENT CONTRACTOR** - Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or create a relationship of employer/employee or principal/agent between Client or Client's Contractors and AECOM.
- 8. CONFIDENTIALITY**
- 8.1 AECOM shall treat as confidential information and data delivered to it by Client or developed in the performance of the Services that are specified in writing by Client to be confidential ("Confidential Information"). Confidential Information shall not be reproduced, transmitted, disclosed or used by AECOM without the consent of Client, except in the proper performance of the Services, for a period of 5 years following completion or termination of this Agreement.

- 8.2 Notwithstanding the above, these restrictions shall not apply to Confidential Information which (i) is already known to AECOM at the time of its disclosure; (ii) becomes publicly known through no wrongful act or omission of AECOM; (iii) is communicated to a third party with the express written consent of Client and not subject to restrictions on further use or disclosure; (iv) is independently developed by AECOM; or, (v) to the extent such Confidential Information is required by Law to be disclosed to any governmental agency or authority; provided that before making such disclosure, AECOM shall promptly provide Client with written notice of such requirement and a reasonable opportunity for Client to object to the disclosure or to take action as Client deems appropriate to maintain the confidentiality of the Confidential Information.
- 8.3 Upon termination of this Agreement or upon Client's written request, AECOM shall return the Confidential Information to Client or destroy the Confidential Information in AECOM's possession or control. Notwithstanding the above, AECOM shall be entitled to retain a copy of such Confidential Information relating to the Services or this Agreement for its archives, subject to AECOM's continued compliance with this Article 8.

## 9. DATA RIGHTS

- 9.1 All Deliverables set forth in Exhibit A shall become the property of Client upon proper payment for the Services. AECOM shall bear no liability or responsibility for Deliverables that have been modified post-delivery or used for a purpose other than that for which it was prepared under this Agreement.
- 9.2 Notwithstanding Section 9.1 above, AECOM's proprietary information, including without limitation, work papers, drawings, specifications, processes, procedures, software, interim or draft documents, methodologies, know-how, software and other instruments of service belonging to or licensed by AECOM and used to develop the Work Product ("AECOM Data"), shall remain the sole property of AECOM. To the extent the Deliverables contain or require the use of AECOM Data, AECOM hereby grants to Client, upon proper payment for the Services, a non-exclusive, non-transferable and royalty-free license to use such AECOM Data solely for the purposes for which the Deliverables were developed.
- 9.3 Nothing in this Article shall be construed to prohibit AECOM from using skills, knowledge or experience gained by AECOM in the performance of the Services for other purposes, provided that AECOM does not use Client's Confidential Information.

10. **RECORD DRAWINGS** – Owner shall direct the Construction Team to provide AECOM with updated red-line documentation which accurately and completely reflects any changes between the original design and the final construction. Record drawings to be delivered by AECOM to Owner as a part of the Services ("Record Drawings") reflect the design provided by AECOM as modified by such updated information. Consistent with AECOM's defined Services, AECOM shall not have an obligation to independently validate such information related to the actual construction. AECOM makes no warranty or guarantee with regard to the accuracy or completeness of the information provided by the Construction Team and third parties and shall bear no responsibility for any errors or omissions arising from or related to any defects or deficiencies in such information.

## 11. ELECTRONIC FILES

- 11.1 Electronic files to be delivered under this Agreement contain information to be used for the production of contract documents for the Project and are provided solely as an accommodation to Owner. The official Contract Documents of Record ("Contract Documents") are those documents produced by AECOM which bear seals and/or signatures. Unless otherwise expressly set forth in the Services, the electronic files delivered under this Agreement are not Contract Documents.
- 11.2 The electronic files were created to supplement the official Contract Documents. Due to the possibility that files of this nature can be modified, either unintentionally or otherwise; or that the information contained in these files can be used in a manner for which they were not originally intended; or that electronic data may be corrupted by electronic transmission, AECOM makes no representation that the files, after delivery, will remain an accurate representation of the source data in AECOM's possession, or are suitable for any other purpose or use.

- 11.3 All indications of AECOM's and AECOM's subconsultants' involvement, including but not limited to seals and signatures, shall be removed from each electronic display and shall not be included in any prints produced therefrom.
- 11.4 Owner understands and agrees that the right to use the electronic files provided under this Agreement is specifically limited to the Project and is conditioned upon proper payment for such use.
- 11.5 If a third-party license is required to access or use electronic files, Owner acknowledges its responsibility at its own expense to obtain all applicable hardware and software needed to legally access the electronic files.

**12. CERTIFICATION**

- 12.1 For purposes of this Agreement, "certification" means to state or declare a professional opinion based on the standard of performance set forth in Section 5.1 above.
  - 12.2 AECOM shall not be required to execute certificates that would (i) result in AECOM having to certify, guarantee or warrant the existence of conditions whose existence AECOM cannot reasonably ascertain under the existing Services; (ii) require knowledge, services or responsibilities beyond the Services; or (iii) may, in AECOM's reasonable judgment, require AECOM to make a certification that would not normally be covered by AECOM's professional or other liability insurance. In addition, Owner agrees not to make resolution of any dispute with AECOM or payment of any amount due to AECOM in any way contingent upon AECOM executing such certificates.
  - 12.3 A professional's certification in no way relieves other parties from meeting their respective requirements imposed by contract or other means, including commonly accepted industry standards and practices. If required as a part of its Services, AECOM will provide a written report stating whether, in AECOM's professional opinion and based on periodic site visits, the construction work complies generally with the Contract Documents.
- 13. CHANGED SITE CONDITIONS** - The unexpected discovery of hazardous materials, hazardous wastes, pollutants, contaminants or concealed obstructions or utilities that could not reasonably have been anticipated from information reasonably available to AECOM may constitute a changed site condition. To the extent that such changed site condition materially increases the health and safety risks associated with the Services or requires AECOM to perform services materially different or materially in excess from those set forth in the Services, AECOM may, at its sole discretion, elect to suspend and/or terminate the related Services and shall be paid for the related Services up through the date of such termination. To the extent that the changed site conditions materially impact the cost, level of effort or schedule of the Services, an equitable adjustment shall be made to the Services.
- 14. MATERIALS AND SAMPLES** - Any items, substances, materials or samples removed from the site for testing, analysis, or other evaluation will be returned to the Project Site unless otherwise agreed to by the Parties in writing. Owner recognizes and agrees that AECOM is acting as a bailee and at no time assumes title to said items, substances, materials or samples.
- 15. COMPLIANCE** - The Parties shall comply with applicable treaties, compacts, statutes, ordinances, codes, regulations, consent decrees, orders, judgments, rules, and other requirements of governmental or judicial entities that have jurisdiction over the Services ("Law").
- 16. FORCE MAJEURE** - Neither Party shall be responsible for a delay in its respective performance under this Agreement, other than a delay in payment for Services already performed, if such delay is caused by extraordinary weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, acts of governmental agencies or authorities, discovery of Hazardous Materials or differing and unforeseeable site conditions, or other events beyond the reasonable control of the claiming Party. AECOM shall be entitled to an equitable adjustment to the Project Schedule in the foregoing circumstances.

**17. INSURANCE**

17.1 AECOM will maintain the following minimum insurance coverages and amounts:

- 17.1.1 Workers Compensation insurance as required by Law;
- 17.1.2 Employer's Liability Insurance with coverage of \$1,000,000 each accident/employee.
- 17.1.3 Commercial General Liability insurance with coverage of \$2,000,000 per occurrence/aggregate;
- 17.1.4 Automobile Liability insurance with coverage of \$1,000,000 combined single limit; and
- 17.1.5 Professional Liability insurance with coverage of \$5,000,000 per claim/aggregate.

**18. INDEMNITY**

18.1 AECOM agrees to indemnify Client, its officers, directors and employees, from loss or damage for bodily injury or property damage ("Claims"), to the extent caused by AECOM's negligence or willful misconduct.

18.2 If the Services include AECOM's performance during the construction phase of the Project, Client shall require Client's Contractors working on the Project Site to include AECOM, its directors, officers and employees in any indemnity that the Contractors are required to provide to Client relating to their work.

**19. CONSEQUENTIAL DAMAGES WAIVER - IN NO EVENT SHALL EITHER PARTY, THEIR PARENTS, AFFILIATES, SUBSIDIARIES OR THEIR RESPECTIVE DIRECTORS, OFFICERS OR EMPLOYEES BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF REVENUE, LOSS OF USE OR INTERRUPTION OF BUSINESS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**20. RISK ALLOCATION AND RESTRICTION OF REMEDIES - THE PARTIES HAVE EVALUATED THE RESPECTIVE RISKS AND REMEDIES UNDER THIS AGREEMENT AND AGREE TO ALLOCATE THE RISKS AND RESTRICT THE REMEDIES TO REFLECT THAT EVALUATION. CLIENT AGREES TO RESTRICT ITS REMEDIES UNDER THIS AGREEMENT AGAINST AECOM, ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES, ("AECOM COVERED PARTIES"), SO THAT THE TOTAL AGGREGATE LIABILITY OF THE AECOM COVERED PARTIES SHALL NOT EXCEED THE ACTUAL PAID COMPENSATION FOR THE SERVICES. THIS RESTRICTION OF REMEDIES SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS (INCLUDING ATTORNEY FEES) AND DAMAGES OF ANY NATURE ARISING FROM OR RELATED TO THIS AGREEMENT WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. CLAIMS MUST BE BROUGHT WITHIN ONE CALENDAR YEAR FROM PERFORMANCE OF THE SERVICES UNLESS A LONGER PERIOD IS REQUIRED BY LAW.**

**21. DISPUTES RESOLUTION**

21.1 Either Party may initiate a dispute resolution by providing written notice to the other Party setting forth the subject of the claim, dispute or controversy ("Claim") and the requested relief. The recipient of such notice shall respond within 5 business days with a written statement of its position and a recommended solution to the Claim.

21.2 If the Parties cannot resolve the dispute through negotiation, either Party may refer the Claim to a panel ("Panel") consisting of a designated senior representative from each Party ("Representative"), who shall have the authority to resolve such Claim. The Representatives shall not have been directly involved in the Services and shall negotiate in good faith. No written or verbal representation made by either Party in the course of any panel proceeding or other settlement negotiations shall be deemed to be a party admission. If the representatives are unable to resolve the dispute within 3 weeks, either Party may pursue its respective legal and equitable remedies.

- 21.3 Owner shall make no Claim for professional negligence, either directly or in a third-party claim, against AECOM unless Owner has first provided AECOM with a written certification executed by an Independent design professional currently practicing in the same discipline as the Services and licensed in the state in which the Project is located. This certification shall (i) contain the name and license number of the certifier; (ii) specify each and every act or omission that the certifier contends is a violation of the standard of care set forth in Article 5; and (iii) states in detail the basis for the certifier's opinion that each such alleged act or omission constitutes a violation of Article 5 of this Agreement.
22. **GOVERNING LAW** - This Agreement shall be governed by and interpreted under the laws of the State of California, excluding the conflict of law provisions.
23. **TERMINATION**
- 23.1 This Agreement may be terminated for convenience by either Party upon 30 days advance written notice. On termination, AECOM will be paid for all Services performed up through the termination date.
- 23.2 This Agreement may be terminated for cause by the non-defaulting Party if the defaulting Party fails substantially to perform its obligations under this Agreement and does not commence correction of such non-performance within 5 business days of receipt of written notice and then diligently complete such correction thereafter. The respective rights and obligations of the Parties predating such termination shall survive termination of this Agreement.
24. **ASSIGNMENT**
- 24.1 Neither Party may assign this Agreement without the written consent of the other Party.
- 24.2 Notwithstanding Section 24.1 above, the Parties recognize that AECOM has affiliated companies who have specialized expertise, necessary certifications/registrations or other capabilities that may make use of such affiliates more suitable for the performance of all or part of the Services. AECOM shall be entitled without additional consent to assign this Agreement or performance of the Services, in whole or in part, to any of AECOM's subsidiaries or affiliates upon written notice to Client; provided, however, that AECOM shall remain liable for the performance, obligations and responsibilities of such Affiliates under this Agreement.
25. **PARTIES IN INTEREST** - Nothing in this Agreement, expressed or implied, is intended to confer on any person or entity other than the Parties any right or remedy under or by reason of this Agreement. The provisions of this Agreement shall bind and inure solely to the benefit of the Parties and their respective successors and permitted assigns.
26. **WAIVER** - Either Party may in writing waive any provisions of this Agreement to the extent such provision is for the benefit of the waiving Party. No waiver by any Party of a breach of any provision of this Agreement shall be construed to be a waiver of any subsequent or different breach.
27. **SEVERABILITY AND SURVIVAL** - The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted. Articles 4 (Notice), 5 (AECOM's Responsibilities), 6.2 (Reliance on Data), 8 (Confidentiality), 9 (Data Rights), 10 (Record Drawings), 11 (Electronic Records), 12 (Certifications), 14 (Materials and Samples), 17 (Insurance), 18 (Indemnity), 19 (Consequential Damages Waiver), 20 (Risk Allocation), 21 (Disputes Resolution), 22 (Governing Law), 24 (Assignment), 25 (Parties In Interest) and 27 (Survival) shall survive termination of this Agreement.
28. **PREPARATION OF AGREEMENT** - Each Party has had the opportunity to avail itself of legal advice and counsel. Neither Party shall be deemed to be the drafter or author of this Agreement. In the event this Agreement is subject to interpretation or construction by a court of law or panel of arbitration, such court or panel shall not construe this Agreement, or any portion hereof, against either Party as the drafter of this Agreement.
29. **SIGNATURES** - Each person executing this Agreement warrants that he/she has the necessary authority to do so on behalf of the respective Party. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

**30. ORDER OF PRECEDENCE**

<b>EXHIBIT C</b>	Change Orders
<b>Consulting Services Agreement</b>	Article 31
<b>Consulting Services Agreement</b>	Articles 1 through 30 and 32
<b>EXHIBIT B</b>	Compensation and Payment
<b>EXHIBIT A</b>	Services
<b>Other Contract Documents</b>	

**31. SPECIAL TERMS AND CONDITIONS** - The following changes are made in Terms 1-30 of this Agreement.

30.1 Article 5.1 - Delete "90 days" and replace with "365 days".

30.2 Article 17.1.5 - Add text: "With the exception of coverage required under 17.1.1 and 17.1.5, Town of Orleans shall be included an additional insured on all policies of insurance."

30.3 Article 19 is deleted.

30.4 Delete Article 20 and replace with the following new Article 20:

"20. **RISK ALLOCATION AND RESTRICTION OF REMEDIES** - THE PARTIES HAVE EVALUATED THE RESPECTIVE RISKS AND REMEDIES UNDER THIS AGREEMENT AND AGREE TO ALLOCATE THE RISKS AND RESTRICT THE REMEDIES TO REFLECT THAT EVALUATION. CLIENT AGREES TO RESTRICT ITS REMEDIES UNDER THIS AGREEMENT AGAINST AECOM, ITS PARENTS, AFFILIATES AND SUBSIDIARIES; AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES, ("AECOM COVERED PARTIES"), SO THAT THE TOTAL AGGREGATE LIABILITY OF THE AECOM COVERED PARTIES SHALL NOT EXCEED FIVE MILLION DOLLARS (\$5,000,000.00). THIS RESTRICTION OF REMEDIES SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS (INCLUDING ATTORNEY FEES) AND DAMAGES OF ANY NATURE ARISING FROM OR RELATED TO THIS AGREEMENT WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. CLAIMS MUST BE BROUGHT WITHIN ONE CALENDAR YEAR FROM PERFORMANCE OF THE SERVICES UNLESS A LONGER PERIOD IS REQUIRED BY LAW."

30.5 Article 21.3 is deleted.

30.6 Article 22 - Delete text: "State of California, excluding the conflict of law provisions" and replaced with "Commonwealth of Massachusetts".

30.7 Article 23.2 - Delete text: "5 business days" and replaced with "10 business days".

**32. AECOM shall comply with the requirements in Exhibit D.**

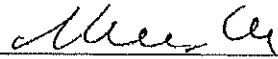
**33. ENTIRE AGREEMENT** - This Agreement contains all of the promises, representations and understandings of the Parties and supersedes any previous understandings, commitments, proposals or agreements, whether oral or written. This Agreement shall not be altered, changed, or amended except as set forth in a written amendment to this Agreement, duly executed by both Parties. The attached **EXHIBIT C** ("Change Order"), incorporated herein by reference, is the preferred form for such use.

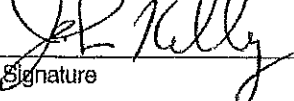
AECOM Technical Services, Inc.  
Pocasset, MA

Town of Orleans, Massachusetts  
Final Design of Downtown Area Sewer Collection System  
Treatment Facility and Effluent Disposal Site

AECOM Technical Services, Inc.

Town of Orleans, Massachusetts

  
Signature

  
Signature

Betsy Shreve-Gibb  
Printed Name

John Kelly  
Printed Name

Vice President  
Title


Orleans Town Administrator  
Title

Address  
9 Jonathan Bourne Road  
Pocasset, MA 02559

Address  
19 School Road  
Orleans, MA 02653

**Town Accountant's Certificate**

I hereby certify that an appropriation in the amount of this contract is available therefore and that the undersigned official of the Town has been authorized to execute said contract and approve all requisitions and change orders.

  
Signature

Cathy Doane  
Printed Name

Finance Director/Town Accountant  
Title

9/5/18  
Date

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**EXHIBIT A  
SERVICES**

Services:

Attachment 1 to Exhibit A - Scope of Services
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Schedule:

Attachment 2 to Exhibit A - Project Schedule
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Attachment 1 to Exhibit B - Deliverable Payment Schedule
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Deliverables:

Attachment 1 to Exhibit A - Scope of Services
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AECOM Project Manager

Name	Thomas E. Parece, PE
Title	Project Manager
Phone Number	978-905-2354
E-mail Address	<a href="mailto:tom.parece@aecom.com">tom.parece@aecom.com</a>

Client Project Manager:

Name	Thomas E. Daley, P.E.
Title	Director of Public Works & Natural Resources
Phone Number	508-240-3700, ext. 363
E-mail Address	<a href="mailto:tdaley@town.orleans.ma.us">tdaley@town.orleans.ma.us</a>

(End of Section)

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**ATTACHMENT 1 TO EXHIBIT A**  
**SCOPE OF SERVICES**

The Town of Orleans, Massachusetts (OWNER) and AECOM Technical Services, Inc. (ENGINEER) in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below for the Final Design of Downtown Area Sewer Collection System, Treatment Facility and Effluent Disposal Site. The scope of work includes the integration of relevant components of the Comprehensive Wastewater Management Plan (CWMP) completed by the Town in 2011 and work since including the 25% downtown area collection system design, 25% wastewater plant design (29 Oak Ridge Lane) and studies for effluent disposal at 32 Lots Hollow Road in order to permit, design and bid the Downtown Area Sewer System as generally described in the draft "Collection System Preliminary Design Report (25% Design)" dated August 22, 2017 and draft "Wastewater Treatment Facility Preliminary Design Report (25% Design)" dated June 7, 2017. Included in the project is an Impact Evaluation based upon sewerage the Meetinghouse Pond Area and its effects on the Downtown Area Collection System. In general the scope of work consists of the following:

- Prepare contract documents (specifications and drawings) to be bid under MGL Chapter 30, 39M for the Downtown Area Sewer Collection System based upon the 25% design plans, 25% design review and the record plans for the recently completed portion of the Downtown Sewer Collection System (Main Street at Route 6A and Route 28). The sewer area has 330 parcels and 1,087 sewer users and includes three wastewater pumping stations.
- Prepare contract documents (specifications and drawings) to be bid under MGL Chapter 149 bid for a Sequencing Batch Reactor (SBR) Wastewater Treatment Facility located at 29 Oak Ridge Lane (former Tri-town septage facility site). Existing flow for the Downtown Area collection system is estimated at 140,000 GPD, and future flow is estimated at 234,000 GPD. The SBR Wastewater Treatment Facility will include a septage receiving facility with a capacity of 16,000 GPD as well as an effluent disposal system via wick wells located at 32 Lots Hollow Road in Orleans, Massachusetts.
- Prepare a Downtown Area Impact Evaluation Technical Memorandum that summarizes the anticipated impacts in the final Downtown Area Sewer Design based upon sewerage the Meetinghouse Pond Area and its effects on the Downtown Area Collection System.
- Permit work with related regulatory agencies.
- Prepare and file required documents in order for the Town to apply for SRF funding for the project within the appropriate timelines per the SRF program.
- Prepare preliminary opinion of construction cost estimates and present to the Town during the design phase.
- Prepare updated opinion of construction cost estimates on or before March 28, 2019 in order to print in the Annual Town meeting warrant for complete construction funding.
- Attend monthly project status meetings in order to present the status of the design, permitting, etc., obtain feedback, resolve questions and to keep the project on track.
- Present project status to the Board of Selectmen and the Town at least twice prior to April 3, 2019.
- Assist the Town and the Town's Owner Program Manager with regards to conducting to the prequalification of general and filed sub-bidders as required by Chapter 193 of the Acts of 2004, entitled "An Act Further Regulating Public Construction in the Commonwealth" which was signed into law on July 19, 2004.
- After receiving the Approval to Advertise from the SRF program the ENGINEER shall put the project out to bid in the late winter early spring of 2020. It is assumed the project will be bid in two separate bid documents. A MGL Chapter 149 bid for the wastewater treatment facility and effluent disposal systems and a MGL Chapter 30, 39M bid for the collection system and pumping stations.
- With consultation with the Town the Consultant shall respond to questions, issue addenda, attend and run a pre-bid meeting, evaluate the received bids, check references and make a recommendation of award to the Town.

- If funds are appropriated, execute a change order to provide construction phase engineering services consisting of project administration, attend and lead pre-construction meetings, attend and progress meetings, review and process shop drawings, review monthly payment applications, and make payment recommendations to the Town, provide qualified full-time on-site field representation, and prepare close-out documents including record plans.

#### SECTION 1 - SERVICES OF THE ENGINEER

ENGINEER shall perform the following Design Phase (Design Phase Basic Services and Design Phase Additional Services); and Construction Phase Services (Construction Phase Basic Services and Resident Services During Construction) to which this Agreement applies, as hereinafter provided:

- 1.1 Design Phase Basic Services - ENGINEER shall provide Design Phase Basic Services as described in SECTION 2, paragraph 2.1 through paragraph 2.10, inclusive.
- 1.2 Design Phase Additional Services - ENGINEER shall provide Design Phase Additional Services as described in SECTION 3, paragraph 3.1 through paragraph 3.6, inclusive.

The services called for in the SECTION 2 - Design Phase Basic Services and SECTION 3 - Design Phase Additional Services will be completed by May 31, 2020 after written authorization to proceed from OWNER.

- 1.3 Construction Phase Basic Services - ENGINEER shall provide Construction Phase Basic Services as described in SECTION 4, paragraph 4.1 through paragraph 4.12, inclusive.
- 1.4 Construction Phase Additional Services - ENGINEER shall provide Construction Phase Additional Services as described in SECTION 5, paragraph 5.1 through paragraph 5.3, inclusive.
- 1.5 Resident Services During Construction - ENGINEER shall provide Resident Services During Construction as described in SECTION 6, paragraph 6.1 through paragraph 6.5, inclusive.

The services called for in the SECTION 4 - Construction Phase Basic Services; Section 5 Construction Phase Additional Services; and SECTION 6 - Resident Services During Construction will be completed within a time to be determined following completion of the Design Phase (Design Phase Basic Services and Design Phase Additional Services) excluding agency/committee review and approval and after written authorization to proceed from OWNER.

#### SECTION 2 - DESIGN PHASE BASIC SERVICES

After written authorization to proceed, ENGINEER shall in conformance with SECTION 1

- 2.1 In consultation with OWNER prepare Contract Documents (specifications and drawings).
  - 2.1.1 Prepare for review and approval by OWNER, its legal counsel and other advisors, Contract Documents (specifications and drawings) for:
    - 2.1.1.1 Downtown Area Collection System and Pumping Stations.
    - 2.1.1.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal.
- 2.2 The design will conform to OWNER's Standards, and TR-16: Guides for the Design of Wastewater Treatment Works, prepared by the New England Interstate Water Pollution Control Commission and or standards that are commonly used in the industry.
  - 2.2.1 Plan profile sheets will be prepared at a scale of 1" = 40' horizontal and 1" = 4' Vertical.
  - 2.2.2 Plans and sections for wastewater treatment facility, pumping stations and effluent disposal facilities will be drawn at scales sufficient to show necessary detail (such as 1" = 20', 1/4" = 1', etc.).
  - 2.2.3 Detail sheets will be prepared showing relevant construction details, including soil and erosion control measures. Contract drawings will be prepared using Land Development Desktop, an extension of AutoCAD.
- 2.3 On the basis of the approval of the draft Preliminary Design Reports (25% Design), ENGINEER will prepare for incorporation in the Contract Documents (Drawings and Technical Specifications) to show the general scope, extent and character of the work to be furnished and performed by the Contractors.

2.4 ENGINEER will prepare specifications (8-1/2-inch by 11-inch, black and white, double sided) as part of the preparation of the Contract Documents. OWNER shall provide ENGINEER any special bid solicitation and/or contract requirements that apply to this project that must be included in the documents. The Bidding and Contract Requirement specifications will be based on documents provided by the OWNER modified for regulatory requirements. The anticipated Technical Specifications includes:

2.4.1 Downtown Area Collection System and Pumping Stations

BIDDING AND CONTRACT REQUIREMENTS

- Advertisement For Bids
- Instructions to Bidders
- Form of General Bid
- Agreement
- Attachment A - Additional Forms
- Performance Bond
- Payment Bond
- General Conditions
- Supplementary Conditions
- State Regulations (Massachusetts)
- Attachment A - Minimum Wage Rates
- Attachment B - Excerpts from MGL 30
- Attachment C - Change Orders
- SRF Funding Documents

TECHNICAL SPECIFICATIONS

- Division 1 – General Requirements
  - Allowances
  - Measurement and Payment
  - Payment Procedures
  - Special Requirements
  - Reference Standards
  - Environmental Protection;
  - Submittals
  - Miscellaneous Testing and Soil Data
  - Construction Progress Schedules
  - Quality Assurance
  - Temporary Facilities
  - Traffic Management and Maintenance
  - Special Mechanical and Electrical Equipment Requirements
  - Contract Closeout
- Division 2 – Site Work
  - Site Preparation
  - Earthwork
  - Loaming and Seeding
  - Site Improvements
  - Paving, Curbing, Sidewalks and Roadway
  - Water Mains and Appurtenances
  - Polyvinyl Chloride Sewer Pipe
  - PVC Force Main
  - Ductile Iron Sewer Pipe
  - Hydrostatic Testing and Disinfection
  - Clean and TV Inspection of Sewer Lines
  - Storm Drainage Piping
  - Manholes, Catch Basins, Handholes and Pull Boxes
- Division 3 – Concrete
  - Cast in Place Concrete
- Division 4 – Masonry (Not Used)
- Division 5 – Metal Work
  - Miscellaneous Metal Work
- Division 6 – Wood and Plastic (Not Used)
- Division 7 – Thermal and Moisture Protection
  - Waterproofing and Damp Proofing
- Division 8 – Doors and Windows (Not Used)
- Division 9 - Finishes
  - Painting
- Division 10 - Specialties
  - Signs

- Division 11 - Equipment
  - Sluice Gates, Slide Gates and Operator
  - Packaged Pumping Station
  - Odor Control System
- Division 12 – Furnishings (Not Used)
- Division 13 – Special Construction
  - Instrumentation and Control System
- Field Instruments
- Supervisory Control and Data Acquisition (SCADA) System
- Division 14 – Conveying Systems (Not Used)
- Division 15 - Mechanical
  - Mechanical General Conditions
  - Process Piping
  - Natural Gas Piping System
  - Plumbing Systems
  - Heating, Ventilating and Air Conditioning
  - HVAC Testing, Adjusting and Balancing
- Division 16 - Electrical
  - Electrical General Conditions
  - Miscellaneous Electrical Equipment
  - Wires and Cables
  - Raceways and Fittings
  - Underground Systems
  - Grounding System
  - Variable Frequency Drives
  - Engine Generator

2.4.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal

BIDDING AND CONTRACT REQUIREMENTS

- Advertisement For Bids
- Instructions to Bidders
- Form of General Bid
- Commonwealth of Massachusetts DCAM Update Statement
- Form for Subbid
- Agreement
- Attachment A - Additional Forms
- Performance Bond
- Payment Bond
- General Conditions
- Supplementary Conditions
- State Regulations (Massachusetts)
- Attachment A - Minimum Wage Rates
- Attachment B - Excerpts from MGL 30
- Attachment C - Change Orders
- SRF Funding Documents

TECHNICAL SPECIFICATIONS

- Division 1 -- General Requirements
  - Allowances
  - Measurement and Payment
  - Payment Procedures
  - Special Requirements
  - Reference Standards
  - Environmental Protection;
  - Submittals
  - Miscellaneous Testing and Soil Data
  - Construction Progress Schedules
  - Quality Assurance
  - Temporary Facilities
  - Traffic Management and Maintenance
  - Special Mechanical and Electrical Equipment Requirements
  - Contract Closeout
- Division 2 -- Site Work
  - Site Preparation
  - Earthwork
  - Water Mains and Appurtenances
  - Polyvinyl Chloride Sewer Pipe
  - PVC Force Main
  - Ductile Iron Sewer Pipe
  - Hydrostatic Testing and Disinfection
  - Clean and TV Inspection of Sewer Lines
- Division 3 - Concrete
  - Concrete Formwork
  - Concrete Reinforcement
  - Concrete Specialties
  - Cast-In-Place Concrete
  - Concrete Placing, Curing and Finishing
- Division 4 -- Masonry
  - Masonry
- Division 5 -- Metal Work
  - Structural Steel
  - Cold-Formed Metal Framing
  - Aluminum Tank Covers
  - Miscellaneous Metal Work
- Division 6 -- Wood and Plastic
  - Rough Carpentry
  - Sheathing
  - Prefabricated Wood Trusses
- Division 7 - Waterproofing and Damp Proofing
  - Storm Drainage Piping
  - Manholes, Catch Basins, Handholes and Pull Boxes
  - Loaming and Seeding
  - Site Improvements
  - Effluent Disposal System
  - Chain Link Fence and Gates
  - Planting Operations
  - Paving, Curbing, Sidewalks and Roadway
- Division 8 -- Doors and Windows
  - Building Insulation
  - Asphalt Shingles
  - Wood Shingles
  - Sealants and Firestopping
  - Metal Doors and Frames
  - Fiberglass Reinforced Plastic Doors and Frames
  - Rolling Metal Doors
  - Wood Windows
  - Finish Hardware
  - Glass and Glazing
- Division 9 -- Fiberglass Products and Structures
  - Finish Carpentry
  - Fiberglass Products and Structures
  - Fiberglass Fabrications
  - Fiberglass Covers and Appurtenance

- Division 9 - Finishes
  - Enclosed Septage Receiving System
  - Variable Frequency Drives
  - Odor Control System
  - Ultraviolet Disinfection Equipment
  - Air Blower Equipment
  - Air Diffuser Systems - Coarse Bubble
  - SBR Equipment
  - Wastewater Sampler
  - Chemical Storage Tanks
  - Division 12 - Furnishings
  - Laboratory Furnishings
  - Window Treatment
  - Entrance Floor Mats
  - Furniture
  - Division 13 - Special Construction
  - Instrumentation and Control System
  - Field Instruments
  - Supervisory Control and Data Acquisition (SCADA) System
  - Security Surveillance System
  - Fiber Optic Media
  - Division 14 - Conveying Systems
  - Monorail and Hoisting Equipment
  - Division 15 - Mechanical
    - Mechanical General Conditions
    - Mechanical Insulation
    - Process Piping
- Division 10 - Specialties
  - Miscellaneous Equipment and Specialties
  - Louvers
  - Plaque
  - Signs
  - Emergency and Miscellaneous Equipment
  - Fire Extinguishers
  - Restroom Equipment
  - Loading Dock Bumpers
  - Division 11 - Equipment
    - Submersible Mixers
    - Sluice Gates, Slide Gates and Operators
    - Submersible Pumps
    - Double Disc Sludge Pumps
    - Sump Pumps
    - Chemical Metering Pump
    - Plant Water System
    - Sludge Grinders
- Division 16 - Electrical
  - Wires and Cables
  - Raceways and Fittings
  - Cable Trays
  - Panelboards
  - Underground Systems
  - Grounding System
  - Lighting System
  - Engine Generator
  - Fire Alarm System
  - Security Alarm Systems
  - Telecommunication Systems
  - Motor Control Centers
  - Switchboards
  - Electrical Power System Studies
  - Electrical Power Commissioning
- Natural Gas and Liquefied Petroleum Gas (LPG) Piping System
  - Fuel Oil Systems
  - Water Based Fire Suppression Sprinkler System
  - Plumbing Systems
  - Heating, Ventilating and Air Conditioning
  - HVAC Testing, Adjusting and Balancing
  - Miscellaneous Equipment

2.5 ENGINEER will prepare drawings (22-inch by 34-inch, black and white) as part of the preparation of the Contract Documents. OWNER shall provide ENGINEER any special bid solicitation and/or contract requirements that apply to this project that must be included in the documents. The anticipated drawings will include:

- 2.5.1 Downtown Area Collection System and Pumping Stations
  - Cover Sheet, Location Plan
  - General Notes, Legends and Abbreviations
  - Sewer Details
  - Index
  - Plan and Profile
  - Traffic Management Plan
  - Sheet Key Plan
  - Pumping Stations Plan, Sections and Details
- 2.5.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal
  - General
    - Architectural
      - Abbreviations and Symbols
      - Building Basement and Ground Level Plans
      - Building Elevations
      - Building Sections
      - Room Finish Schedule, Door Schedule and Details
      - Miscellaneous Schedules and Details
    - Mechanical
      - Abbreviations and Symbols
      - Hydraulic Profile and Flow Schematic
      - Yard Piping
      - Basement Plans
      - Ground Floor Plans
      - Basement Sections
    - Structural
      - Ground Floor Sections
      - Details and Schematics
    - HVAC
      - Notes, Legends and Abbreviations
      - Basement and Ground Floor Plans
      - Legends, Schedules, and Details
  - Cover Sheet
  - Index
  - Notes
  - Site
    - Existing Conditions Plan
    - Layout Plans
    - Grading and Drainage Plan
    - Effluent Disposal Area Plans
    - Effluent Disposal System Section and Details
    - Site Construction Details
    - Environmental Details
  - Structural
    - Building and Tank Foundation Plans
    - Building and Tank Ground Floor Plans
    - Roof Framing Plan and Details
    - Building Sections
    - Building Details
    - Tank Sections
    - Tank Details
    - Notes and Details
  - HVAC
    - Flow Diversion Structure Plan and Section
    - Force Main Plan and Profile
    - Flow Diversion Structure Plan and Section

- Plumbing
  - Notes, Legends and Abbreviations
  - Basement and Ground Floor Plans
  - Legend, Schedule, and Details
- Electrical
  - Legend and General Notes
  - Site Plan
  - Single Line Diagrams and Schematics
  - Control Wiring Diagrams
  - Block Wiring Diagrams
  - Conduit and Panel Board Schedules and Details
  - Fire and Security Riser Diagram
  - Duct Bank Sections and Details
  - Lighting – Basement and Ground Floor Plans
  - Power – Basement and Ground Floor Plans
- Instrumentation
  - Legend, Symbols and Notes
  - PLC Network Diagrams
  - Instrument Installation Details

- 2.6 Provide to the OWNER 60 percent design progress documents for review and comments.
- 2.7 In consultation with OWNER and approval of the 60 percent design documents, review and address OWNER's comments; and other agency/committee comments as part of the preparation of 90 percent design progress documents. The Project schedule includes 2 week review period by the OWNER and/or Owner's Program Manager.
- 2.8 In consultation with OWNER and approval of the 90 percent design documents, review and address OWNER's comments; and regulatory agency comments as part of the preparation of 100 percent design documents. The Project schedule includes 2 week review period by the OWNER and/or Owner's Program Manager and up to a 4 week period for regulatory agency reviews.
- 2.9 ENGINEER will update the estimate of probable cost for the Construction of the project for the January 2019 Project Meeting and in preparation for the May 2019 Annual Town Meeting and advertising the project for bids.
- 2.10 ENGINEER will perform an Impact Evaluation based upon sewerage the Meetinghouse Pond Area with a proposed wastewater discharge of up to 110,000 gpd into the proposed Downtown Area Collection System and Pumping Stations Project. The Impact Evaluation will identify effects of the proposed Meetinghouse Pond Area proposed wastewater discharge on the Downtown Area Collection System (gravity sewers, pumping stations and force mains). ENGINEER will prepare a Technical Memorandum that summarizes the impacts and identifies alternatives and associate costs to minimize and/or eliminate the impacts.

### SECTION 3 - DESIGN PHASE ADDITIONAL SERVICES

After written authorization to proceed ENGINEER shall in conformance with SECTION 1:

- 3.1 Prepare for, attend and participate in the following meetings in order to obtain local and state requirements for incorporation into the Contract Documents for the project:
  - 3.1.1 OWNER
    - 3.1.1.1 Kickoff Meeting (1);
    - 3.1.1.2 Project Status Meetings (9);
    - 3.1.1.3 Board of Selectmen Project Design Updates (2);
    - 3.1.1.4 Technical Workshops (6). Engineer shall prepare for and conduct technical Workshops with the Department of Public Works and Natural Resources, Owner's Program Manager, and other Town Departments. The Workshops will review and discuss the following: Public Communication during Construction; Roadway Reconstruction; Roadway Drainage; Water System Improvements; Construction Phasing and Seasonal Construction; Standardize of Equipment and Equipment Preselection; Development of Standards; Record Plans and GIS Mapping. In addition, the Technical Workshops will discuss the financial impacts to the Construction Costs and Engineering Costs.
  - 3.1.2 Massachusetts Department of Transportation (4);
  - 3.1.3 Massachusetts Department of Environmental Protection (4);
  - 3.1.4 Cape Cod Commission (2);
  - 3.1.5 Orleans Site Plan Review Committee (4); and
  - 3.1.6 Old King's Highway (4).

- 3.2 Coordinate, prepare and submit the following environmental and regulatory review materials and permit applications with supporting documents for the project:
- 3.2.1 Massachusetts Department of Transportation;
  - 3.2.2 Massachusetts Department of Environmental Protection;
  - 3.2.3 Cape Cod Commission;
  - 3.2.4 Orleans Site Plan Review Committee; and
  - 3.2.5 Old King's Highway.
- 3.3 ENGINEER shall submit and coordinate the reviews for the Contract Documents (plans and specifications) regarding consistency with documents such as: (a) TR16, Guides for the Design of Wastewater Treatment Works by New England Interstate Water Pollution Control Commission; (b) Wastewater Engineering: Treatment, Disposal, and Reuse" by AECOM (Metcalf & Eddy); (c) Guidelines for the Design, Construction, Operation, and Maintenance of Small Wastewater Treatment Facilities with Land Disposal" by MassDEP; and (d) Section 208 Plan Update by the Cape Cod Commission.
- 3.4 ENGINEER shall utilize Goods and Services procurement process as allowed under MGL Ch. 30b to obtain firm specific equipment pricing to access which vendor will be used of the Downtown Area Wastewater Treatment Facility and Effluent Disposal Project. Assumed specific process equipment includes the following and will be finalized in workshops conducted with the OWNER and Owner's Program Manager:
- 3.4.1 Sequencing Batch Reactors;
  - 3.4.2 Ultraviolet Disinfection; and
  - 3.4.3 Effluent Filters.
- 3.5 ENGINEER shall submit and coordinate throughout the SRF funding process the reviews and approvals including: (a) Project Evaluation Form (PEF); (b) Certification of Funding; (c) Loan Application; (d) Part B; and (e) Close-out Documents:
- 3.5.1 Downtown Area Collection System and Pumping Stations Project; and
  - 3.5.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project.
- 3.6 Bidding Phase
- 3.6.1 Provide contract documents (plans and specifications) to the OWNER.
    - 3.6.1.1 Downtown Area Collection System and Pumping Stations Project – 12 Sets (4 copies at 2-foot by 3-foot and 8 copies at 11-inch by 17-inch); and
    - 3.6.1.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project – 12 Sets (4 copies at 2-foot by 3-foot and 8 copies at 11-inch by 17-inch)
  - 3.6.2 Provide contract documents (plans and specifications) via Compact Disk for issuance to prospective bidders.
    - 3.6.2.1 Downtown Area Collection System and Pumping Stations Project – 40 Sets; and
    - 3.6.2.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project– 80 Sets.
  - 3.6.3 Assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for Construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conference and receive and process deposits for Bidding Documents.
  - 3.6.4 Attend pre-bid conferences (Downtown Area Collection System and Pumping Stations and Downtown Area Wastewater Treatment Facility and Effluent Disposal) and prepare minutes of meetings.

- 3.6.5 Issue Addenda to Interpret, clarify or expand the Bidding Documents for:
  - 3.6.5.1 Downtown Area Collection System and Pumping Stations Project – Up to 4 Addenda; and
  - 3.6.5.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project – Up to 6 Addenda.
- 3.6.6 Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in SECTION 8, and assist OWNER in obtaining such data and services.
- 3.6.7 Attend the bid openings, prepare bid tabulation sheets, and assist OWNER in evaluating bids or proposals and offer an opinion on the award of the Construction Contracts. ENGINEER may be required to provide OWNER with information, which may lead to the rejection of one or more contractors.
  - 3.6.7.1 Downtown Area Collection System and Pumping Stations Project – 1 General Bid Opening; and
  - 3.6.7.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project – 1 General Bid Opening and Subbid Openings (scheduled to occur on the same day).
- 3.6.8 Prepare the Construction Contracts for execution by the OWNER and the Construction Contractors
  - 3.6.8.1 Downtown Area Collection System and Pumping Stations Project; and
  - 3.6.8.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project.

**SECTION 4 – CONSTRUCTION PHASE BASIC SERVICES**

**(Note: Not yet Funded. Scope of Work, Quantities and Associated Fee to be negotiated at a later date.)**

After written authorization to proceed, ENGINEER shall in conformance with SECTION 1:

- 4.1 Arrange for and attend preconstruction conferences with the OWNER and the Contractor.
- 4.2 Administration of Construction Contract. ENGINEER shall consult with and advise OWNER and act as OWNER's representative, as provided in the General Conditions of the Construction Contract. The extent and limitations of the duties, responsibilities and authority of ENGINEER, as assigned in said General Conditions, shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER who will have authority to act on behalf of OWNER only to the extent provided in the General Conditions, except as otherwise expressly stated and agreed to in writing by ENGINEER.
- 4.3 ENGINEER's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with written authorization to proceed with the Construction Phase Basic Services and terminates at the earlier of the issuance to OWNER of the final Certificate for Payment or sixty (60) days after the date of Substantial Completion of the work, whichever first occurs.
- 4.4 Visits to Site and Observation of Construction. In connection with observations of the work of Contractor(s) while it is in progress:
  - 4.4.1 ENGINEER visit 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. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in a manner indicating that the work when completed will be in accordance with the Contract Documents; and ENGINEER shall keep OWNER informed of the progress of the work.

- 4.4.2 The purpose of ENGINEER's visits to, and representation by the Resident Project Representative (if required under SECTION 1 of this Agreement) at, the site will be to enable ENGINEER to better execute the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by 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(s) will conform generally to the Contract Documents and that the integrity of the design concept, as reflected in the Contract Documents, has been implemented and preserved by Contractor(s).
- 4.4.3 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(s), safety precautions and programs incident to the work of Contractor(s) or any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s)' furnishing and performing its work. Accordingly, ENGINEER can neither guarantee the performance of the Construction Contract(s) by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform its work in accordance with the Contract Documents.
- 4.4.4 ENGINEER shall make visits to the sites:
- 4.4.4.1 Downtown Area Collection System and Pumping Stations Project – Up to (TBD) Site Visits; and
  - 4.4.4.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project - Up to (TBD) Site Visits.
- 4.5 Defective Work. During such visits and on the basis of such observations, ENGINEER may disapprove or reject Contractor(s)' work while it is in progress, if ENGINEER believes 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 Project as reflected in the Contract Documents. ENGINEER will notify OWNER of any disapproved or rejected work by the Contractor within 2 working days.
- 4.6 Interpretations and Clarifications. ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders, as required. In issuing such interpretations and clarifications ENGINEER shall endeavor to secure faithful performance by both OWNER and Contractor(s), shall not demonstrate partiality to either and shall not be liable for the result of any interpretation, clarification or other decision or judgment rendered in good faith.
- 4.6.1 ENGINEER will review and respond to Requests for Information (RFIs) submitted by the Contractor:
    - 4.6.1.1 Downtown Area Collection System and Pumping Stations Project – Up to (TBD) RFIs; and
    - 4.6.1.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project - Up to (TBD) RFIs.
  - 4.6.2 ENGINEER will review and evaluate Proposed Change Orders (PCOs) submitted by the Contractor and will negotiate and prepare information for processing Change Orders:
    - 4.6.2.1 Downtown Area Collection System and Pumping Stations Project – Up to (TBD) Change Orders; and
    - 4.6.2.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project - Up to (TBD) Change Orders.

4.7 Shop Drawings

4.7.1 ENGINEER shall review and take appropriate action in respect of Shop Drawings (as that term is defined in the aforesaid General Conditions), samples and other data which Contractor(s) is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other actions shall not extend to means, methods, techniques, sequences or procedures of Construction or to safety precautions and programs incident thereto. ENGINEER's review or other actions, as described above, shall not constitute approval of an assembly of which an item is a component, nor shall it relieve the Contractor(s) of (a) its obligations regarding review and approval of any such submittals, as set forth in General Conditions; and (b) its exclusive responsibility for the means, methods, sequences, techniques and procedures of Construction, including safety of Construction.

4.7.2 ENGINEER shall review and take appropriate action on Shop Drawings:

4.7.2.1 Downtown Area Collection System and Pumping Stations Project – Up to (TBD) Shop Drawings; and

4.7.2.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project - Up to (TBD) Shop Drawings.

4.8 Inspections and Tests. ENGINEER shall have authority, as OWNER's representative, to require special inspection or testing of the work and shall receive and review all certificates of inspection, testing and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).

4.9 Disputes Between OWNER and Contractor(s). ENGINEER shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work there under, and make decisions 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. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

4.10 Applications for Payment. Based on ENGINEER's on-site observations, as an experienced and qualified design professional, on information provided by the Resident Project Representative and on review of applications for payment and the accompanying data and schedules:

4.10.1.1 ENGINEER shall determine the amounts owing to Contractor(s) and recommend in writing (Certificates for Payment) payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated and that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole and integrated unit 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). 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).

- 4.10.1.2 By recommending any payment ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by ENGINEER or the Resident Project Representative to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically designated to ENGINEER in this AGREEMENT and the Contract Documents. ENGINEER's review of Contractor(s)' work for the purposes of recommending payments will not impose upon ENGINEER responsibility to supervise, direct or control such work, for the means, methods, techniques, sequences or procedures of Construction, safety precautions or programs incident thereto or Contractor(s)' compliance with laws, rules, regulations, ordinances, codes or orders applicable to its furnishing and performing the work. It will, also, not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes any Contractor(s) has used the monies paid on account of the Contract Price, to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claim, security interest or encumbrances or that there may not be other matters at issue between OWNER and Contractor(s) that might affect the amount that should be paid.
- 4.10.1.3 ENGINEER shall review and make recommendation for payment:
- 4.10.1.3.1 Downtown Area Collection System and Pumping Stations Project – Up to (TBD) Payment Applications; and
- 4.10.1.3.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project - Up to (TBD) Payment Applications.
- 4.11 Visits to Site. ENGINEER shall conduct an observation visit to determine if the work is substantially complete and a final visit to determine if the completed work is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor(s) and may give written notice to OWNER and Contractor(s) that the work is acceptable (subject to any conditions therein expressed); but any such recommendation and notice will be subject to the limitations expressed in herein.
- 4.11.1 Downtown Area Collection System and Pumping Stations Project – Up to (TBD) Site Visits; and
- 4.11.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project - Up to (TBD) Site Visits.
- 4.12 Limitations of Responsibilities. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), or of any subcontractor(s) or supplier(s), or any of Contractor(s)' or subcontractor(s)' or supplier(s)' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing Contractor(s)' work.

#### SECTION 5 – CONSTRUCTION PHASE ADDITIONAL SERVICES

(Note: Not yet Funded. Scope of Work, Quantities and Associated Fee to be negotiated at a later date.)

- 5.1 Record Drawings
- 5.1.1 Prepare a set of record drawings at the conclusion of the Project, which shall incorporate addenda issued by ENGINEER during the bidding period, clarifications and sketches issued by ENGINEER during the construction period, and change orders approved by the OWNER.
- 5.1.2 Provide record drawings to the OWNER:
- 5.1.2.1 Downtown Area Collection System and Pumping Stations Project – 1 Compact Disk and 6 Hard Copies (2 copies at 22-inch by 34-inch and 4 copies at 11-inch by 17-inch); and
- 5.1.2.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project – 1 Compact Disk and 6 Hard Copies (2 copies at 22-inch by 34-inch and 4 copies at 11-inch by 17-inch).
- 5.2 ENGINEER will prepare the following Public Management System Documents:
- 5.2.1 GIS Wastewater Mapping;
- 5.2.2 Sewer Use Rules and Regulations;
- 5.2.3 Pretreatment Rules and Regulations;

- 5.2.4 Private Property Rules and Regulations;
- 5.2.5 Septage Management Plan; and
- 5.2.6 Operation and Maintenance Manuals:
  - 5.2.6.1 Wastewater Treatment Facility;
  - 5.2.6.2 Pumping Stations; and
  - 5.2.6.3 Collection System.

ENGINEER will prepare a draft operations and maintenance manuals prior to the start-up of the wastewater treatment facility, pumping stations and collection system. ENGINEER will revised the operations and maintenance after the 12 month extended operations period. The operation and maintenance manuals are required by the MassDEP and will be utilized by the OWNER's operations staff to properly operate and maintain the facilities. The anticipated chapters include:

Wastewater Treatment Facility

- |                            |                          |                           |
|----------------------------|--------------------------|---------------------------|
| a. Introduction            | h. Solids Processing     | o. Personnel              |
| b. Headworks               | i. Odor Control          | p. Safety                 |
| c. Equalization Tanks      | j. Water Systems         | q. Chemical Handling      |
| d. Biological Process      | k. Electrical Operations | r. Emergency Operation    |
| e. Effluent Filters        | l. SCADA                 | s. Vulnerability Analysis |
| f. Post Equalization Tanks | m. Laboratory            | t. Record Keeping         |
| g. Disinfection            | n. Maintenance           |                           |

Pumping Stations

- |                             |                      |                           |
|-----------------------------|----------------------|---------------------------|
| a. Introduction             | f. SCADA             | k. Emergency Operation    |
| b. Equipment and Components | g. Maintenance       | l. Vulnerability Analysis |
| c. Force Main               | h. Personnel         | m. Record Keeping         |
| d. Odor Control             | i. Safety            |                           |
| e. Electrical Operations    | j. Chemical Handling |                           |

Collection System

- |                 |                |                           |
|-----------------|----------------|---------------------------|
| a. Introduction | d. Maintenance | g. Emergency Operation    |
| b. Components   | e. Personnel   | h. Vulnerability Analysis |
| c. Odor Control | f. Safety      | i. Record Keeping         |

ENGINEER will provide 1 Compact Disk and 6 Hard Copies of each document to the OWNER.

- 5.3 ENGINEER will provide engineering assistance (extended operations) for a period of three hundred and sixty five (365) calendar days as required by the MassDEP. The extended operations shall consist of providing general office and field engineering services and periodic site visits throughout the extended operations period in order to assist the OWNER in the operations of the facility. ENGINEER shall provide up to (TBD) hours of operations assistance.
- 5.3.1 Downtown Area Collection System and Pumping Stations Project – Up to (TBD) Site Visits; and
- 5.3.2 Downtown Area Wastewater Treatment Facility and Effluent Disposal Project - Up to (TBD) Site Visits.

#### SECTION 6 - RESIDENT SERVICES DURING CONSTRUCTION

(Note: Not yet Funded. Scope of Work, Quantities and Associated Fee to be negotiated at a later date.)

- 6.1 ENGINEER shall furnish Resident Project Representative to assist ENGINEER in observing progress and quality of the Work. The Resident Project Representative is ENGINEER's representative at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding Resident Project Representative's actions.
- 6.1.1 ENGINEER shall provide up to (TBD) hours of full time Resident During Construction for the Downtown Area Collection System and Pumping Stations Project;
- 6.1.2 ENGINEER shall provide up to (TBD) hours of part time observation Construction for the Downtown Area Wastewater Treatment Facility and Effluent Disposal Project; and
- 6.1.3 OWNER shall provide a full time Resident During Construction for the Downtown Area Wastewater Treatment Facility and Effluent Disposal Project.
- 6.2 Through Resident Project Representative's observations of the Work, including field checks of materials and installed equipment, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, as a result of such Resident Project Representative observations of the Work, supervise, direct, or have control over the Work, nor shall ENGINEER (including the Resident Project Representative) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Contractor(s), for security or safety at the Site, for safety precautions and programs incident to the Work or any Contractors' work in progress, for the coordination of the Contractors' work or schedules, or for any failure of any Contractor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The ENGINEER (including Resident Project Representative) neither guarantees the performances of any Contractor nor assumes responsibility for any Contractors' failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
- 6.3 The duties and responsibilities of the Resident Project Representative are as follows:
- 6.3.1 General: Resident Project Representative's dealings in matters pertaining to the Work in general shall be with ENGINEER and Contractor. Resident Project Representative's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. Resident Project Representative shall generally communicate with OWNER only with the knowledge of and under the direction of ENGINEER.
- 6.3.2 Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with ENGINEER concerning acceptability of such schedules.
- 6.3.3 Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
- 6.3.4 Safety Compliance: Comply with Site safety programs, as they apply to Resident Project Representative, and if required to do so by such safety programs, receive safety training specifically related to Resident Project Representative's own personal safety while at the Site.

- 6.3.5 Liaison
  - 6.3.5.1 Serve as ENGINEER's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents
  - 6.3.5.2 Assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-Site operations.
  - 6.3.5.3 Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
- 6.3.6 Clarifications and Interpretations: Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to ENGINEER regarding such RFIs. Report to ENGINEER when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit ENGINEER's clarifications, interpretations, and decisions to Contractor.
- 6.3.7 Shop Drawings and Samples
  - 6.3.7.1 Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - 6.3.7.2 Receive Samples that are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.
  - 6.3.7.3 Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if Resident Project Representative believes that the submittal has not been received from Contractor, or has not been approved by Contractor or ENGINEER.
- 6.3.8 Proposed Modifications: Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with Resident Project Representative's recommendations, if any, to ENGINEER. Transmit ENGINEER's response (if any) to such suggestions to Contractor.
- 6.3.9 Review of Work; Defective Work
  - 6.3.9.1 Report to ENGINEER whenever Resident Project Representative 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.
  - 6.3.9.2 Inform ENGINEER of any Work that Resident Project Representative 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; and
  - 6.3.9.3 Advise ENGINEER of that part of the Work that Resident Project Representative believes should be uncovered for observation, or requires special testing, inspection, or approval.
- 6.3.10 Inspections, Tests, and System Start-ups
  - 6.3.10.1 Consult with ENGINEER in advance of scheduled inspections, tests, and systems start-ups.
  - 6.3.10.2 Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.
  - 6.3.10.3 Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems start-ups.

- 6.3.10.4 Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- 6.3.10.5 Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to ENGINEER.
- 6.3.11 Records
  - 6.3.11.1 Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, ENGINEER's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
  - 6.3.11.2 Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, 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.
  - 6.3.11.3 Upon request from OWNER to ENGINEER, photograph or video Work in progress or Site conditions.
  - 6.3.11.4 Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
  - 6.3.11.5 Maintain records for use in preparing Project documentation.
  - 6.3.11.6 Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.
- 6.3.12 Reports
  - 6.3.12.1 Furnish to ENGINEER daily 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.
  - 6.3.12.2 Furnish to ENGINEER and OWNER copies of all inspection, test, and system start-up reports.
  - 6.3.12.3 Immediately inform ENGINEER of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
- 6.3.13 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.
- 6.3.14 Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.

- 6.3.15 Completion
- 6.3.15.1 Participate in ENGINEER's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
  - 6.3.15.2 Participate in ENGINEER's visit to the Site in the company of OWNER and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
  - 6.3.15.3 Observe whether all items on the final punch list have been completed or corrected, and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.
- 6.3.16 Observe, record, and report to ENGINEER potential archeologically sensitive items identified during excavation. OWNER and ENGINEER will attend specially training provided by ENGINEER's subconsultant Public Archaeology Laboratory.
- 6.4 Resident Project Representative shall not:
- 6.4.1 Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
  - 6.4.2 Exceed limitations of ENGINEER's authority as set forth in this Agreement.
  - 6.4.3 Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
  - 6.4.4 Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
  - 6.4.5 Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of OWNER or Contractor.
  - 6.4.6 Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
  - 6.4.7 Accept Shop Drawing or Sample submittals from anyone other than Contractor.
  - 6.4.8 Authorize OWNER to occupy the Project in whole or in part.
- 6.5 Provide Resident Project Representative based on the estimated construction duration. Because of the nature of the work and unforeseen conditions, Contractor(s) may be given an extension of time by OWNER, or may be required to work hours greater than 40 hours per week in order to complete the work within the construction period established in the Contract Documents. If the number of Resident Project Representative hours needed to complete the Construction Contract(s) is exceeded, ENGINEER shall receive additional compensation through an amendment to this AGREEMENT

#### SECTION 7 – SERVICES NOT INCLUDED IN THIS AGREEMENT

Unless specifically called for under SECTION 1 of this Agreement, the services listed in this SECTION 7 are not included as part of this Agreement and are not paid for by OWNER.

- 7.1 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 7.2 Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, unexpected site conditions or unanticipated hazardous materials, OWNER's schedule, character of Construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ENGINEER's control.

- 7.3 Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; during the course of design; the preparation of feasibility studies; cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with Construction performed by OWNER.
- 7.4 Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office, as required by SECTION 1.
- 7.5 Assistance in connection with bid protests, rebidding or renegotiating contracts for Construction, materials, equipment or services.
- 7.6 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project.
- 7.7 Additional or extended services during Construction made necessary by (1) work damaged by fire or other cause during Construction, (2) a significant amount of defective or neglected work of Contractor(s), (3) prolongation of the contract time of any prime contract beyond the date for final completion as set forth in the Contract Documents, (4) acceleration of the progress schedule involving services beyond normal working hours [six 10-hour days per week] and (5) default by Contractor(s).
- 7.8 Protracted or extensive assistance in the utilization of any equipment or system.
- 7.9 The design improvements of other Town owned utilities (water and stormwater) and roadway redesigns are not included in the Total Fee for the Final Design of Downtown Area Sewer Collection System Treatment Facility and Effluent Disposal Site Design Phase Engineering Services (Design Phase Basic Services and Design Phase Additional Services).

#### SECTION 8 - OWNER'S RESPONSIBILITIES

Unless specifically called for as a responsibility of ENGINEER under SECTION 1, OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER:

- 8.1 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.
- 8.2 Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and Construction standards, which OWNER will require to be included in the Drawings and Specifications.
- 8.3 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or Construction of the Project.
- 8.4 Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services, the following:
  - 8.4.1 Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;
  - 8.4.2 Appropriate professional interpretations of all of the foregoing;
  - 8.4.3 Environmental assessment and impact statements as previously prepared as part of the approval Comprehensive Management Plan;
  - 8.4.4 Property descriptions;
  - 8.4.5 Zoning, deed and other land use restriction; and other special data or consultations not covered in SECTION 3;

all of which ENGINEER may use and rely upon in performing services under this Agreement.

- 8.5 Furnish right of entry and permission for ENGINEER to perform planned surveys, borings, and other investigation and exploration, pursuant to the scope of services. Where client is not the owner of the site, and services includes borings, trenches, or other such invasive testing measures, ENGINEER may require written authorization from the property owner to perform such services. ENGINEER will take reasonable precautions to minimize damage to the property from use of equipment, but have not included in the fee the costs of restoration of damage that may result from such operations. If ENGINEER is required to restore the property to its former condition, the cost will be added to its fee.
- 8.6 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants, as OWNER deems appropriate for such examination, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 8.7 Provide such accounting, independent cost estimating and insurance counselling services, as may be required for the Project, 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(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor(s) has used the monies paid under the Construction Contract, and such inspection services as OWNER may require to ascertain that Contractor(s) is complying with any law, rule, regulation, ordinance, code or order applicable to its furnishing and performing the work.
- 8.8 If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person and the effect thereof on duties and responsibilities of ENGINEER and the Resident Project Representative (and any assistants) will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.
- 8.9 If more than one prime contract is to be awarded for Construction, materials, equipment and services for the entire Project, ENGINEER shall designate a person or organization with authority and responsibility for coordinating the activities among the various prime contractors.
- 8.10 Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.
- 8.11 Attend the pre-bid conference, bid opening, pre-Construction conferences, Construction progress and job related meetings, substantial completion inspections and final payment inspections.
- 8.12 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services or any defect or non-conformance in the work of any Contractor(s).
- 8.13 Furnish, or direct ENGINEER to provide, Basic and Construction Additional Services as stipulated in SECTION 6 of this Agreement or other services, as required.
- 8.14 Submit to ENGINEER the proposed language of certifications, affidavits and/or assignments requested of ENGINEER or ENGINEER's independent contractors and consultants for review and approval at least 14 days prior to execution. OWNER shall not request certifications and/or affidavits that would require expertise, knowledge or services beyond the scope of this Agreement.
- 8.15 Bear all costs incident to compliance with the requirements of this SECTION 8.

(End of Section)

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**ATTACHMENT 2 TO EXHIBIT A**  
**PROJECT SCHEDULE**

1. Upon execution of this Agreement, AECOM shall begin its services promptly and will diligently prosecute the work to completion. The services called for under this Agreement are to be provided through the periods listed below.
  - 1.1 ATTACHMENT 1 TO EXHIBIT A, SECTION 2, Design Phase Basic Services, paragraph 2.1 through paragraph 2.7, inclusive - For a period ending no later than five hundred and thirty (530) calendar days after the date of execution of this Agreement.
  - 1.2 ATTACHMENT 1 TO EXHIBIT A, SECTION 2, Design Phase Additional Services, paragraph 3.1 through paragraph 3.5, inclusive - For a period ending no later than five hundred and thirty (530) calendar days after the date of after the date of execution of this Agreement.
  - 1.3 ATTACHMENT 1 TO EXHIBIT A, SECTION 3, SRF Funding Process Bid, paragraph 3.5 - For a period ending no later than one thousand one hundred and ninety (1,190) calendar days after the date of after the date of execution of this Agreement.
  - 1.4 ATTACHMENT 1 TO EXHIBIT A, SECTION 3, Bid Phase Services, paragraph 3.6 - For a period ending no later than one hundred twenty four (124) calendar days after receiving notice from the Client to advertise the project for construction.
  - 1.5 ATTACHMENT 1 TO EXHIBIT A, SECTION 4, Construction Phase Basic Services, paragraph 4.1 through paragraph 4.12, inclusive - For a period ending no later than one thousand one hundred and ninety (1,190) calendar days after execution of Construction Contracts.
  - 1.6 ATTACHMENT 1 TO EXHIBIT A, SECTION 5, Construction Phase Additional Services, Record Drawings (paragraph 5.1) - For a period ending no later than ninety (90) calendar days after the original contract completion date specified in the construction contract.
  - 1.7 ATTACHMENT 1 TO EXHIBIT A, SECTION 5, Construction Phase Additional Services (paragraph 5.2) - For a period ending no later than one hundred and eighty (180) calendar days from the mid-point of the original contract duration specified in the construction contract.
  - 1.8 ATTACHMENT 1 TO EXHIBIT A, SECTION 5, Construction Phase Additional Services, Extended Operations (paragraph 5.3) - For a period ending no later than three hundred sixty five (365) calendar days after the original contract completion date specified in the construction contract.
  - 1.9 ATTACHMENT 1 TO EXHIBIT A, SECTION 6, Resident Services During Construction, paragraph 6.1 through paragraph 6.5, inclusive - For a period ending no later than the original contract completion dates specified in the construction contracts.
2. In the event that AECOM (or any of its subcontractors) is delayed at any time in performing the tasks set forth herein by any act or neglect of the Client, or any representative, contractor, employee or agent of the Client, or by labor disputes, fire and other casualty, unusual delay in transportation, inclement weather, act of war or governmental preemption, or any delay in the review of specific tasks set forth herein, in approval by any government agency, federal, state or municipal, or any causes beyond AECOM's control, or by delay authorized by the Client pending resolution of a dispute, or any significant modification or changes in the extent of the work to be performed by AECOM, then the time for completion of the Project shall be extended by the same number of days as such occurrence delays such completion. AECOM shall not be responsible for, and the Client shall hold AECOM harmless from, any expenses or other consequences resulting from any such occurrences or delays.
3. If Client or others require significant modifications or changes to the scope of the Project or AECOM's services or if Client or others substantially delay AECOM's performance, the time of performance of AECOM's service and its compensation shall be adjusted appropriately.

(End of Section)

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**EXHIBIT B  
 COMPENSATION AND PAYMENT**

1. **COMPENSATION** - The Services set forth in **EXHIBIT A** will be compensated on the following basis:
  - Advance retainer of \$\_\_\_\_\_. The advance retainer is to be applied to the final invoice. Any remainder will be returned to Client within 30 days of receipt of final payment.
  - Time and Material - See Section 2.1 for Hourly Labor Rates
  - Time and Materials with a Not-to-Exceed ("NTE") amount of \$\_\_\_\_\_. The Hourly Labor Rates, if applicable, are as in Section 2.1 below. Reimbursable expenses are included in the overall NTE cap.
  - Lump Sum \$3,100,000. Total Fee for the Design Phase Engineering Services (Design Phase Basic Services and Design Phase Additional Services); payment will be made by Milestone (Attachment 1 to Exhibit B)
  - Cost Plus Fixed Fee: Cost of \$\_\_\_\_\_ and Fee of \$\_\_\_\_\_.
  - Other:

2. **RATE SCHEDULE** - Compensation shall be based on the following Hourly Labor Rate Schedule:

2.1 **HOURLY LABOR RATE SCHEDULE**

	\$
	\$
	\$
	\$
	\$
	\$

- 2.2 **OTHER HOURLY LABOR RATES** - If additional services are authorized during the performance of this Agreement, compensation will be based on the Schedule of Fees in effect at the time the Services are authorized.
- 2.3 **ANNUAL HOURLY LABOR RATE ADJUSTMENTS** - Hourly Labor Rate Schedule is adjusted each calendar year to reflect updated labor cost categories. Labor cost of Services authorized in subsequent calendar years will be based on the applicable Hourly Labor Rate Schedule for those years.
3. **REIMBURSABLE EXPENSES** - Reimbursable expenses are expenditures made by AECOM for goods, travel expenses and vendor services in support of the performance of the Services. Such expenditures will be billed at the actual cost to AECOM plus five percent (5%) to cover related administrative costs.
4. **CHANGE ORDERS** - The Parties may at any time and by written agreement make changes in the Services, Project Schedule, Deliverables, Compensation or other terms and conditions in this Agreement. The Parties shall effect such change through the use of a written Change Order. **EXHIBIT C** is the preferred form for such use.
5. **DELAY** - To the extent not the fault of AECOM, if the Project Schedule is extended or delayed, or if the orderly and continuous progress of the Services is impaired, then an equitable adjustment shall be made to this Agreement.
6. **INVOICING** - AECOM will invoice Client on a monthly basis unless otherwise set forth herein. If Client disagrees with any portion of an invoice, it shall notify AECOM in writing of the amount in dispute and the specific reason for Client's objection within 30 days of receipt of invoice. Client shall pay the undisputed portion of the invoice as set forth below. Documentation supporting the invoice will be made available upon request.

**7. PAYMENT**

- 7.1 If payment is based on Time and Materials with a NTE, once AECOM reaches the NTE, AECOM will stop further Services pending a Change Order to adjust the budget and schedule for the continued performance of the Services.
- 7.2 Timely payment is a material term of this Agreement. Client shall pay all undisputed portions of AECOM's invoices within 30 days of receipt without holdback or retention. AECOM may suspend the Services pending receipt of such payment for amounts remaining unpaid 30 days. In addition, AECOM retains its unrestricted rights under Article 18 (Termination) of the Agreement.
- 7.3 If the Project is suspended by Client for more than 120 days, AECOM shall be paid for all Services performed prior to the effective date of suspension within 120 days of such suspension. Upon resumption of the Project, AECOM shall be entitled to an equitable adjustment in cost and schedule to compensate AECOM for expenses incurred as a result of the interruption and resumption of the Services.
- 7.4 Except as otherwise specifically provided herein, Client shall pay or reimburse AECOM, as appropriate, for all categories of taxes other than income tax, including without limitation, sales, consumer, use, value added, gross receipts, privilege, and local license taxes related to the Services.
- 7.5 Client shall make payments to AECOM using one of the following methods:

**7.5.1 AECOM LOCKBOX:**

AECOM Technical Services, Inc.  
1178 Paysphere Circle  
Chicago, IL 60674

**7.5.2 ELECTRONIC FUNDS TRANSFER/ACH PAYMENT:**

Account Name: AECOM Technical Services, Inc.  
Bank Name: Bank of America  
Address1: Building D  
Address2: 2000 Clayton Road  
City/State/Zip: Concord, CA 94520-2425  
Account Number: 5800937020  
ABA Routing Number: 071000039

**7.5.3 WIRE TRANSFER:**

Account Name: AECOM Technical Services, Inc.  
Bank Name: Bank of America  
Address: 100 West 33rd St  
City/State/Zip: New York, NY 10001  
Account Number: 5800937020  
ABA Routing Number: 026009593  
SWIFT Code: BOFAUS3N

Questions related to payment can be sent to:

AECOM Cash Applications Supervisor by phone at (804) 515-8490 or by email at [cashappsremittance@aecom.com](mailto:cashappsremittance@aecom.com)

(End of Section)

**ATTACHMENT 1 TO EXHIBIT B  
MILESTONE PAYMENT SCHEDULE**

Number	Deliverable	Value
1	Design Phase	
	Field Investigations	\$300,000 <sup>1</sup>
	Meetinghouse Pond Area Impact Evaluation	\$31,700 <sup>2</sup>
	Preselection of Key Process Equipment	\$75,000 <sup>3</sup>
	Contract Documents - 60 Percent	\$1,500,000 <sup>4</sup>
	Contract Documents - 90 Percent	\$618,300 <sup>5</sup>
	Contract Documents - 100 Percent	\$200,000 <sup>6</sup>
	Contractor Prequalification Process	\$30,000 <sup>7</sup>
	Project Status Meetings and Technical Workshops	\$270,000 <sup>8</sup>
2	Bidding Phase	\$75,000 <sup>9</sup>
3	Construction Phase	
	Construction Phase Basic Services	TBD <sup>10 and 11</sup>
	Construction Phase Additional Services	TBD <sup>10 and 11</sup>
	Resident Services During Construction	TBD <sup>10 and 12</sup>
	Extended Operations	TBD <sup>10 and 13</sup>
	<b>Total</b>	<b>\$3,100,000</b>

Note:

1. Field Investigations will be invoiced in three equal amounts.
2. Meetinghouse Pond Area Impact Evaluation will each be invoiced in two equal amounts.
3. Preselection of Key Process Equipment will be invoiced in three equal amounts.
4. Contract Documents - 60 Percent will be invoiced in three equal amounts.
5. Contract Documents - 90 Percent will be invoiced in three two amounts.
6. Contract Documents - 100 Percent will be invoiced in one lump sum amount.
7. Contractor Prequalification Process will be invoiced in two equal amounts.
8. Project Status Meetings and Technical Workshops will be invoiced monthly.
9. Bidding Phase will be invoiced in three equal amounts.
10. The value for the Construction Phase Basic Services, Construction Phase Additional Services and Resident Services During Construction will be determined at the end of the Design Phase Engineering Services (Design Phase Basic Services and Design Phase Additional Services). Completion of the Construction Phase Basic Services, Construction Phase Additional Services and Resident Services During Construction is pending appropriation of funds at a future Town Meeting.
11. Construction Phase Basic Services and Construction Phase Additional Services will be invoiced in equal amounts monthly throughout the construction duration.
12. Resident Services During Construction will be invoiced based on actual time incurred throughout the construction duration.
13. Extended Operations will be invoiced in twelve equal amounts.

(End of Section)

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**EXHIBIT C**  
**CHANGE ORDER FORM**

In accordance with the Design Engineering Services Agreement dated \_\_\_\_\_, 2018 between the Town of Orleans, Massachusetts ("Client"), and AECOM Technical Services, Inc., a California corporation, ("AECOM"), this Change Order, with an effective date of \_\_\_\_\_, 20\_\_\_\_, modifies that Agreement as follows:

1. **Changes to the Services**


2. **Change to Deliverables**

3. **Change In Project Schedule** (attach schedule if appropriate)

4. **Change in Consultant's Compensation**

The Services set forth in this Change Order will be performed on the following basis:

- No change to Compensation
- Time & Material (See Exhibit B for the Hourly Labor Rate Schedule)
- Time and Materials with a Not- to-Exceed amount of \$ Numerical Amount. The Hourly Labor Rate Schedule is set forth in EXHIBIT B (if applicable). Reimbursable expenses are included in the overall Not to Exceed cap.
- Lump Sum \$ Numerical Amount

Milestone/Deliverable & Date	Payment Amount
	\$

- Cost Plus Fixed Fee: Cost \$ Numerical Amount and Fee \$ Numerical Amount.

Therefore, the total authorized Compensation, inclusive of the Change Order is \$ Numerical Amount.

- 5. **Project Impact** - Insert any anticipated additional impact of the Change on the Project in addition to the direct changes in the cost, schedule or scope contained in the Change Order (e.g., the Change will cause other activities to be delayed; Change will require re-sequencing of the other work on the Project; etc.). If there is no additional impact, insert "NONE".
- 6. **Other Changes** - (including terms and conditions): Changes to the terms and conditions of this Agreement require Contract Reviewer/Analyst's approval. If there are no changes, insert "NONE" in the box below.
- 7. All other terms and conditions of the Agreement remain unchanged.
- 8. Each Party represents that the person executing this Change Order has the necessary legal authority to do so on behalf of the respective Party.

AECOM Technical Services, Inc.  
Pocasset, MA

Town of Orleans, Massachusetts  
Final Design of Downtown Area Sewer Collection System  
Treatment Facility and Effluent Disposal Site

**AECOM Technical Services, Inc.**

**CLIENT: Town of Orleans, Massachusetts**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Betsy Shreve-Gibb

\_\_\_\_\_  
John Kelly

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Vice President

\_\_\_\_\_  
Orleans Town Administrator

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
9 Jonathan Bourne Road  
Pocasset, MA 02559

\_\_\_\_\_  
Address

\_\_\_\_\_  
19 School Road  
Orleans, MA 02653

**Town Accountant's Certificate**

I hereby certify that an appropriation in the amount of this contract is available therefore and that the undersigned official of the Town has been authorized to execute said contract and approve all requisitions and change orders.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Cathy Doane

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Finance Director/Town Accountant

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

EXHIBIT D

ADDITIONAL PROVISIONS – MGL Chapter 7C, Section 51

- b. If the designer's, interior designer's or construction manager's fee is negotiated, the designer, interior designer or construction manager shall file a truth-in-negotiations certificate prior to being awarded the contract by the commissioner, which must be incorporated into the contract. The certificate shall contain:
  - i. A statement that the wage rates and other costs used to support the designer's or interior designer's compensation are accurate, complete and current at the time of contracting; and
  - ii. An agreement that the original contract price and any additions to the contract may be adjusted within 1 year of completion of the contract to exclude any significant amounts if the commissioner determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.
- c. The board may specify other special conditions or requirements in selecting a particular applicant as a finalist. If any change is made by the applicant after appointment relating to such special conditions or requirements, the change must be approved by the commissioner and reported to the board along with a written statement by the appointee of the reasons for the change.
- d. Every contract for design services awarded under sections 44 to 58, inclusive, shall include the following:
  - i. Certification that the designer, interior designer or construction manager has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for or in connection with the award of the contract for design services;
  - ii. Certification that no consultant to or subcontractor for the designer, interior designer or construction manager has given, offered or agreed to give any gift, contribution or offer of employment to the designer, interior designer or construction manager or to any other person, corporation or entity as an inducement for or in connection with the award to the consultant or subcontractor of a contract by the designer, interior designer or construction manager;
  - iii. Certification that no person, corporation or other entity, other than a bona fide full-time employee of the designer, interior designer or construction manager, has been retained or hired by the designer, interior designer or construction manager to solicit for or in any way assist the designer, interior designer or construction manager 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 or interior designer; and
  - iv. Certification with respect to contracts which exceed \$10,000 or which are for the design of a building for which the budgeted or estimated construction costs exceed \$100,000 that the designer or interior designer has internal accounting controls as required by subsection (c) of section 39R of chapter 30 and that the designer or interior designer has filed and will continue to file an audited financial statement as required by subsection (d) of said section 39R of said chapter 30.
- e. A public agency shall not enter into a contract for design services unless the public agency or the designer or interior designer has obtained professional liability insurance covering negligent errors, omissions and acts of the designer or interior designer or of any person or business entity for whose performance the designer or interior designer is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal the lesser of \$1,000,000 or 10 per cent of the project's estimated cost of construction or such larger amounts as the public agency may require for the applicable period of limitations. A designer or interior designer required by the public agency to obtain all or a portion of such insurance coverage at the designer's or interior designer's own expense shall furnish a certificate of insurance coverage to the public agency prior to the award of the contract. For the purposes of this subsection, "public agency" shall have the meaning set forth in section 1.

(End of Section and Agreement)

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