

**AGREEMENT FOR PROFESSIONAL
ENGINEERING SERVICES
BETWEEN
THE TOWN OF WENHAM, MASSACHUSETTS
AND
BAYSIDE ENGINEERING, INC.
FOR PROFESSIONAL ENGINEERING SERVICES
FOR THE
ROUTE 1A TRAFFIC INTERSECTIONS PROJECT**

THIS AGREEMENT made this 18th day of December, 2018 between Bayside Engineering, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with a usual place of business at 600 Unicorn Drive, Woburn, MA, 01801, hereinafter called the "ENGINEER," and the Town of Wenham, MA, acting by its Board of Selectmen, with a usual place of business at 138 Main Street, Town Hall, Wenham, MA 01984, hereinafter called the "TOWN".

The ENGINEER and the TOWN, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The ENGINEER shall perform the work set forth in the Scope of Services attached hereto as Exhibit A.

2. Contract Price

The TOWN shall pay the ENGINEER for services rendered in the performance of this Agreement a lump sum of \$60,000.00, subject to any additions and deductions provided for herein according to the fee schedule set forth in Exhibit B. The amount to be paid to the ENGINEER shall not exceed \$60,000.00 without the prior written consent of the TOWN.

3. Commencement and Completion of Work

- A. This Agreement shall commence on December 18, 2018 and shall expire on December 31, 2019, unless terminated sooner in accordance with this Agreement.
- B. Progress and Completion: ENGINEER shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure completion in a timely manner.

4. Performance of the Work

The ENGINEER shall supervise and direct the Work, using his best skills and attention, which shall not be less than such state of skill and attention generally rendered by the engineering/design profession for projects similar to the Project in scope, difficulty and location.

A. Responsibility for the Work:

- (1) The ENGINEER shall be responsible to the TOWN for the acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the ENGINEER. Consistent with the standard of care referenced above, the ENGINEER shall be responsible for the professional and technical accuracy for all work or services furnished by him or his consultants and subcontractors. The ENGINEER shall perform his work under this Agreement in such a competent and professional manner that detail checking and reviewing by the TOWN shall not be necessary.
- (2) The ENGINEER shall not employ additional consultants, nor sublet, assign or transfer any part of his services or obligations under this Agreement without the prior approval and written consent of the TOWN. Such written consent shall not in any way relieve the ENGINEER from his responsibility for the professional and technical accuracy for the work or services furnished under this Agreement.
- (3) All consultants must be registered and licensed in their respective disciplines if registration and licensure are required under the applicable provisions of Massachusetts law.
- (4) The ENGINEER and all consultants and subcontractors shall conform their work and services to any guidelines, standards and regulations of any governmental authority applicable to the type of work or services covered by this Agreement.
- (5) The ENGINEER shall not be relieved from its obligations to perform the work in accordance with the requirements of this Agreement either by the activities or duties of the TOWN in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the ENGINEER.
- (6) Neither the TOWN's review, approval or acceptance of, nor payment for any of the work or services performed shall be construed to operate as a waiver of any rights under the Agreement or any cause of action arising out of the performance of the Agreement.

B. Deliverables, Ownership of Documents: One (1) reproducible copy of all drawings, plans, specifications and other documents prepared by the ENGINEER shall become the property of the TOWN upon payment in full therefor to the ENGINEER. Ownership of stamped drawings and specifications shall not include the ENGINEER's certification or stamp. Any re-use of such documents without the ENGINEER's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the ENGINEER or

to the ENGINEER's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as an act in derogation of the ENGINEER's rights under this Agreement.

- C. Compliance With Laws: In the performance of the Work, the ENGINEER shall comply with all applicable federal, state and local laws and regulations, including those relating to workplace and employee safety.

5. Site Information Not Guaranteed; Contractor's Investigation

The TOWN shall furnish to the ENGINEER available surveys, data and documents relating to the area which is the subject of the Scope of Work. All such information, including that relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the TOWN. All such information is furnished only for the information and convenience of the ENGINEER and is not guaranteed. It is agreed and understood that the TOWN does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures will be the same as those indicated in the information furnished, and the ENGINEER must satisfy himself as to the correctness of such information. If, in the opinion of the ENGINEER, such information is inadequate, the ENGINEER may request the TOWN's approval to verify such information through the use of consultants or additional exploration. In no case shall the ENGINEER commence such work without the TOWN's prior written consent. Such work shall be compensated as agreed upon by TOWN and ENGINEER.

6. Payments to the Contractor

- A. Cost incurred on this project shall be billed monthly on an hourly basis as outlined in the attached Scope of Services. Payment shall be due 30 days after receipt of an invoice by the TOWN.
- B. If there is a material change in the scope of work, the TOWN and the ENGINEER shall mutually agree to an adjustment in the Contract Price.
- C. If the TOWN authorizes the ENGINEER to perform additional services, the ENGINEER shall be compensated in an amount mutually agreed upon, in advance, in writing. Except in the case of an emergency, the ENGINEER shall not perform any additional services until such compensation has been so established.

7. Reimbursement

Except as otherwise included in the Contract Price or otherwise provided for under this Agreement, the ENGINEER shall be reimbursed by the TOWN: (a) at 1.0 times the actual cost to the ENGINEER of consultants retained to obtain information pursuant to Article 5 hereof or otherwise. No such reimbursement shall be made unless the rates of compensation have been approved, in advance, by the TOWN; (b) at 1.0 times the actual cost of additional or specially authorized expense items, as approved by the TOWN.

8. Final Payment, Effect

The acceptance of final payment by the ENGINEER shall constitute a waiver of all claims by the ENGINEER arising under the Agreement.

9. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

10. Indemnification

- A. General Liability: The ENGINEER shall indemnify and hold harmless the TOWN from and against any and all claims, damages, losses, and expenses, including attorney's fees, to the extent arising out of the performance of this Agreement and to the extent the same relate to matters of general commercial liability, when such claims, damages, losses, and expenses are caused, in whole or in part, by the negligent or wrongful acts or omissions of the ENGINEER or his employees, agents, subcontractors or representatives.
- B. Professional Liability: The ENGINEER shall indemnify and hold harmless the TOWN from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement and to the extent the same relate to the professional competence of the ENGINEER's services, when such claims, damages, losses, and expenses are caused, in whole or in part, by the negligent acts, negligent errors or omissions of the ENGINEER or his employees, agents, subcontractors or representatives.

11. Insurance

- A. The ENGINEER shall at his own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts arising out of the performance of this Agreement in a minimum amount of \$1,000,000.00.
- B. The coverage shall be in force from the time of the agreement to the date when all construction work for the Project is completed and accepted by the TOWN. If, however, the policy is a claims made policy, it shall remain in force for a period of six (6) years after completion.

Since this insurance is normally written on a year-to-year basis, the ENGINEER shall notify the TOWN should coverage become unavailable.

- C. The ENGINEER shall, before commencing performance of this Agreement, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all its employees and

shall continue such insurance in full force and effect during the term of the Agreement.

- D. The ENGINEER shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this Agreement in the event of loss or destruction until the final fee payment is made or all data are turned over to the TOWN.
- E. The ENGINEER shall also maintain public liability insurance, including property damage, bodily injury or death, and personal injury and motor vehicle liability insurance against claims for damages because of bodily injury or death of any person or damage to property.
- F. Evidence of insurance coverage and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. Any cancellation of insurance, whether by the insurers or by the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the TOWN at least fifteen days prior to the intended effective date thereof, which date shall be expressed in said notice.
- G. Upon request of the ENGINEER, the TOWN reserves the right to modify any conditions of this Article.

12. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

13. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The TOWN shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the ENGINEER. In the event that the Agreement is terminated pursuant to this subparagraph, the ENGINEER shall be reimbursed in accordance with the Agreement for all work performed up to the termination date.

14. Miscellaneous

- A. Assignment: The ENGINEER shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the TOWN.

B. Governing Law: This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, the TOWN by its authorized representative who, however, incurs no personal liability by reason of the execution hereof or of anything herein contained, as of the day and year first above written.

BAYSIDE ENGINEERING, INC:

TOWN OF WENHAM:

By: Norman H. Brown

By: Catherine Harrison

Name: Norman H. Brown, P.E., P.L.S.

John A. De

Title: President

Jack Wilhel

Title: Board of Selectmen

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EXHIBIT A

SCOPE OF SERVICES

1.0 Survey Base Plan

- 1.1 Provide a detailed topographic survey of the project limits, defined as being from the 700 feet beyond Cherry Street intersection on Route 1A to 400 feet beyond on the Arbor Street. Also included in survey will be approximately 200 feet on all side streets of the project as required by MassDOT.
- 1.2 The detail survey coverage shall extend a minimum of 30 feet beyond the roadway layout lines. All buildings and structures within 60 feet of the roadway layout lines shall be included. Roadway crown and edge of roadway grades at 50-foot intervals minimum adequate for the preparation of detailed cross-sections per MassDOT requirements shall be covered.
- 1.3 Detail information. - Survey shall include all physical features that accurately depict the existing condition of the project area. The information shall include but is not limited to the following:
 - a. Roadway Pavement - note limits and type.
 - b. Driveways and Parking Areas - note all limits within survey coverage and type of pavement or surface
 - c. Curbing, edging, medians, and barriers - note limits and type.
 - d. Sidewalks and handicap ramps - note limits and type.
 - e. All fence and wall information (type, height, thickness and condition), all step/stair information (type, top step elev., bottom elev., # rises).
 - f. All existing structures, stonewalls, etc.
 - g. Guardrail - note limits and type.
 - h. The plan will show all utilities as shown on plans obtained from all private and public utilities within the project limits. Subsurface utilities may be located using record data and may be approximate. If certain underground utilities are located on the base plan by means of record information, they shall be noted as such. In the event incomplete underground information is available, the plans will show all utilities to be continuous using best engineering judgment. Based upon survey visible or available utility plans, the type of utility information shall include:

- Drain System
 - Catch Basins - grate elev., inv., and condition (collapsed, plugged, etc.).
 - Manholes - rims, inverts, and condition (collapsed, plugged, etc.)
 - Pipes - size, type, condition, and direction of flow
 - All existing drainage outlets, with invert and headwall information located within 100 feet of the project limits in any direction.
 - Sanitary sewer- (if applicable)
 - Manholes - rims, inverts, and condition (collapsed, plugged, etc.)
 - Pipes - size, type, condition, and direction of flow
 - Utility lines - size, type, for water, gas, telephone, sewer, electric, CATV and fire alarm.
 - Hydrants, water gates and service connections.
 - Hand holes and pull boxes.
 - Gas gates.
 - Telephone and electric manholes.
 - Utility poles (including pole numbers) and light poles and guy wires, including overhead wires.
 - Any other public or private utility structure or casting located within the defined limits of survey
- i. Buildings or structures with descriptions, and building number. All doorway and stair elevations, garage entrances will be surveyed and clearly shown.
 - j. Spot elevations, at regular intervals of 50 feet maximum (consistent with baseline stations, if possible) and at critical locations including top and bottom of curb, centerline grades, low points and high points, back of sidewalks and at all changes in slope will be shown.
 - k. Existing contours shown as dashed lines at 1-foot intervals and labeled at 2-foot intervals.
 - l. Pavement markings, including lane use and shoulder width, crosswalks, stop bars, parking spaces, and gore areas.
 - m. Traffic/road signs - note direction in which signs face, legend and wording, including those mounted on utility poles, signal posts, and bridges.
 - n. Traffic signal equipment. Include if applicable:
 - direction of signal heads, number and type of faces
 - control cabinets
 - mast arms and foundations (foundation dimensions shall be noted)
 - span wires
 - signal posts (foundation dimensions shall be noted)
 - pedestrian signals, push buttons, cross walks, pull boxes
 - traffic signal control permit
 - roadway loop detectors (if visible)

- traffic signal conduit
- o. Trees (including type of tree and diameter at breast height), shrubs, grass and planted areas. This detailed information shall be provided for the entire project limits. In some cases, densely vegetated area may be plotted as such. However, in all cases where vegetation is too dense to obtain detailed information for the entire survey limits, at a minimum detailed information (i.e., tree type and breast height diameter) shall be provided for all trees within twenty (20) feet of the edge of existing pavement and all trees within the survey limits.
 - p. Bodies of water (lakes, ponds, rivers, streams and brooks): Based upon field conditions the survey shall include and show on plans the mean high water (MHW) of all bodies of water shown with the appropriate line type and labeled "MHW". The name of the body of water shall also be provided. Names shall be as indicated on local USGS maps or as locally accepted (if not shown on the USGS). Mean annual high water line (horizontal and vertical).
 - q. Mail boxes, signs, fences, posts, utility posts, structures, stairs (including top, bottom and number of risers min.), walls, stones or other elements within the limits of work.
 - r. Any other planimetric detail within the limits of survey coverage (Section 1.2).
- 1.4 In the event that drainage system structures or pipes are clogged, submerged, or otherwise preventing the surveyor from obtaining the necessary information (invert, pipe size, etc.), Bayside will immediately make arrangements to have the structure cleaned by MassDOT personnel.
 - 1.5 As may be available, the base plan will show a continuous and complete utility network within the project limits based on field and record information obtained by the surveyor.

2.0 Environmental Permitting

a. Wetland Delineation

1. BAYSIDE will oversee the performance of any wetland delineation services, by a wetlands specialist, which will include delineating regulated wetland resources area boundaries within 100 feet of the limits of work and the identification of perennial streams within 200 feet of the limits of work for the entire project limits.
2. The wetland specialist shall perform the wetland resource area delineation (flagging) necessary for incorporation into the survey base plans. All wetland resource area boundaries within the project limits shall be identified and delineated/flagged in the field for pick-up by Bayside's survey crew(s).

3. With the exception of "isolated wetlands" all wetland resource area boundaries shall be delineated in accordance with the most recent provisions of "310 CMR 10.00." All "isolated wetlands" shall be delineated in accordance with the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands, 1987" and most recent requirements of the U.S. Army Corps of Engineers.

b. Environmental Permitting Services

1. Coordination with local boards, departments and officials including a letter to the local historic commission and the State Historic Preservation Officer (SHPO) with The Massachusetts Historical Commission. Historic Requirements and Section 4(f) Public Land Takings: Bayside will prepare an early coordination/notification letter and send it to the Wenham Historical Commission for their review of the project. The MassDOT Cultural Resources shall complete all other historic, archeological and 4(f) review and permitting, and inform Bayside of any special requirements/provisions.
2. Hazardous Material Research: Bayside shall research the Comprehensive Environmental Recovery, Compensation and Liability Act (CERCLA) CERCLIS Online Database and the MGL Chapter 21E, DEP Bureau of Waste Site Cleanup Online Database for potential spills or land uses (past and present) of concern. If required, the MassDOT Hazardous Materials Section shall complete additional hazardous materials review and assessment and shall inform Bayside and provide any special requirements/provisions.
3. Determine if there are any wetland resource areas within the project limits, including the Massachusetts Wetland and Rivers Protection Act, Section 401 and 404 of the Clean Water Act.
4. Determine whether the project is with or adjacent to any sensitive environmental resources.
5. Fully document the site with photographs.

c. Environmental Permitting Exclusions

The following additional Environmental Permitting Services are presently understood to NOT be required for the proposed work, and are therefore considered to be beyond the Scope of Services as defined herein and are not included in the lump sum fee:

1. Administrative appeals and/or any work required in the preparation of responses to comments, local review and/or permit review processes of the project.
2. Additional hearings, meetings, site reviews and follow-on services not otherwise provided for herein.

3. Water penetration, leak testing, dye testing and/or additional drainage or other investigations not specifically included herein.
4. Wetland resource area replication design.
5. Massachusetts Environmental Policy Act (MEPA) documents beyond evaluation of MEPA thresholds.
6. National Environmental Policy Act (NEPA) Environmental Assessment
7. Regulated Floodway/FEMA
8. Alternatives Analysis
9. 401 Water Quality Certification Application, Forms or Documentation
10. U.S. Army Corps of Engineers Permitting
11. Hazardous Material Assessment, investigation, testing and/or mitigation beyond the online research defined above.
12. Historic Ch. 254, Section 106 or Section 4(f) Wildlife/Biological/Habitat Assessment
13. Endangered Species Habitat Impact Mitigation
14. Wildlife Habitat Detailed Survey Evaluation, Report, Forms, etc.
15. MGL Ch. 91 permitting
16. Preparation of documents for or edits to Federal Environmental Protection agency Notice of Intent for NPDES Permitting.
17. Any other permits or environmental services not specifically included above.

3.0 Police Details

In order to provide roadside safety and traffic control for various work elements during the design phase of the project, particularly field survey and retrieval of soil samples, test pits or boring operations, the TOWN shall provide for all police details or flag persons as may be required or deemed necessary by BAYSIDE and its subconsultants. Bayside will coordinate with the TOWN prior to engaging police details. Police details or flag persons not provided by the TOWN and engaged by BAYSIDE, as may be required, will be billed to the TOWN at cost as a reimbursable expense and are not included in the lump sum fee.

IV. MISCELLANEOUS

- A. It is understood that all information that the TOWN has available relative to the project (i.e., existing plans, traffic study information, economic and demographic information, etc.) will be made available to BAYSIDE so that we may properly review the project area and also for use in the preparation of any funding requests to the State. It is assumed that any existing survey data (if available) will be provided to Bayside in electronic format, complete with all supporting survey points, Triangular Irregular Network (TIN) model and in accordance with the MassDOT State Plane Coordinate System.
- B. Fees for services as described herein will be paid to BAYSIDE by the TOWN as the work progresses, based upon the presentation of a monthly statement for services by BAYSIDE.
- C. Nothing contained herein shall obligate BAYSIDE to prepare for, or appear in arbitration or litigation on behalf of the TOWN or to undertake additional work on matters not included herein, except in consideration of additional compensation mutually agreed upon.
- D. BAYSIDE shall provide the one reproducible copy of the base plan to the town for their review. Additional copies shall be billed to the TOWN as a reimbursable expense.

EXHIBIT B

TOWN OF WENHAM, MASSACHUSETTS ROUTE 1A TRAFFIC INTERESECTIONS PROJECT

FEE SCHEDULE

Supplementary Field Survey/Base Plans	\$52,500
Environmental Permitting	\$ 5,000
Wetlands Flagging	\$ 1,500
Direct Expenses	<u>\$ 1,000</u>

**Total Survey and Preliminary Environmental Services
(Lump Sum Fee)** **\$60,000**

- * Preliminary and Final Design, Environmental Permitting, Right of Way Services and Construction Administration Services will be agreed upon with the Town of Wenham after the completion of the survey and base plan services.