

CLIENT PROFESSIONAL SERVICES AGREEMENT

Kleinfelder Northeast, Inc. and Arlington, Massachusetts

This Agreement is made on: _____ between the Town of Arlington, MA (**Client**) and Kleinfelder Northeast, Inc. (**Kleinfelder**). Client hereby appoints Kleinfelder to provide certain Services (as defined below), and Kleinfelder hereby agrees to perform the Services, on the following terms and conditions:

1. SCOPE OF SERVICES

Client engages Kleinfelder to provide, and Kleinfelder agrees to provide, the professional services as set forth in Kleinfelder's Proposal dated October 31, 2023 (**Proposal**).

2. SCHEDULE AND PAYMENT

Kleinfelder shall perform the Services, and Client shall pay Kleinfelder, in accordance with the schedule and payment basis set forth in the Proposal.

3. GENERAL CONDITIONS AND ADDENDA

THE GENERAL CONDITIONS ON PAGE 2 CONTAIN INDEMNIFICATION, LIMITATION OF LIABILITY AND OTHER IMPORTANT PROVISIONS AFFECTING THE PARTIES' LEGAL RIGHTS AND OBLIGATIONS.

Client and Kleinfelder have read, understand and agree to this Agreement, the General Conditions, the Indemnity and Limitation of Liability provisions located on Page 2, and all Proposal, Fee Schedule and addenda identified herein.

This Agreement includes the terms herein, General Conditions and any Proposal, Fee Schedule and addenda identified herein, which taken together apply to all services undertaken pursuant to this Agreement, represent the parties' entire agreement of and supersedes all agreements on the same subjects between the parties, either oral or in writing, including any Client work or purchase order.

This Agreement is governed and construed in accordance with the laws of the state where the Services are performed. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of such state and waive any right to object to any proceedings being brought in those courts. The parties hereby expressly waive any and all rights to trial by jury.

EXECUTED by the parties as of the date first written above:

CLIENT:

KLEINFELDER:



By: _____

By: _____

Printed Name: _____

Printed Name: Cecilia Carrion-Carmona

Title:

Title: Business Operations Manager,
Kleinfelder Northeast, Inc.

CLIENT PROFESSIONAL SERVICES AGREEMENT – GENERAL CONDITIONS

1. **Standard of Care.** Kleinfelder will perform its Services in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the Services are provided. Kleinfelder makes no representation, guarantee or warranty, express or implied, regarding the Services, or any communication (oral or written), certification, report, opinion, or Instrument of Service provided under or pursuant to this Agreement.
2. **Insurance.** Kleinfelder will maintain worker's compensation, commercial general liability, automobile liability and professional indemnity insurance coverage. Client will maintain adequate insurance coverage and will require and verify any contractors or parties it hires to have adequate insurance coverage. Client agrees that its failure to comply with this clause invalidates any indemnity by Kleinfelder hereunder.
3. **Pricing and Payment.** The hourly rates charged for Kleinfelder's Services are adjusted annually in January of each year to reflect changes in the various elements that comprise such hourly rates. Kleinfelder reserves the right to periodically adjust its fee schedule. Except as otherwise provided in the first page of this agreement or Proposal, Client shall pay invoices upon receipt. Invoices not paid within thirty (30) days of invoice date incur a fee of 1½ % per month from the date of invoice and suspension by Kleinfelder of all Services.
4. **Prevailing Wages.** It is Client's legal responsibility to determine whether the Project is covered under prevailing wage regulations. Unless Client specifically informs Consultant in writing that the Project is a prevailing wage project and is identified as such in Consultant's Scope of Services, Client agrees to defend, indemnify and hold harmless Consultant from and against all liabilities, losses, claims, costs and damages (including reasonable costs and attorneys fees), resulting from a determination that the Project was covered under prevailing wage regulations.
5. **Termination.** Either party may terminate this Agreement at any time upon written notice, whether for cause or for convenience, in which event Client shall pay Kleinfelder for such portion of the Services performed and materials provided up to the date of termination.
6. **Performance.** Kleinfelder will perform the Services as an independent contractor and will not act as Client's agent or employee. The parties do not intend to create, and nothing in this Agreement will be construed to create, any special relationship or fiduciary duty. Kleinfelder will be subject to and operate in compliance with all federal, state and local laws and regulations. Client agrees that Kleinfelder will not be responsible for the means, methods, techniques, sequences or procedures of construction, for constant or exhaustive inspection of construction work, or for the safety procedures employed by any party other than its own employees and subcontractors. Kleinfelder will only sign certifications relating to the Services if Kleinfelder agreed in writing prior to the commencement of the Services to provide them. Such certifications are statements of professional opinion only. Kleinfelder will not be liable for delay or failure to perform its Services caused directly or indirectly by circumstances beyond its control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action or inaction, changed conditions, site inaccessibility, or delays due to actions or inactions of Client or others.
7. **Client Responsibilities.** Client agrees to provide all available material, data, and information pertaining to the Services, including, without limitation, (i) composition, quantity, toxicity, or potentially hazardous properties of any material known or believed to be present at any site, (ii) hazards that may be present, (iii) nature and location of underground or otherwise not readily apparent utilities, (iv) summaries and assessments of site past and present compliance status, (v) status of any judicial or administrative action concerning the site or Project, and (vi) Client's relevant benchmarks, plans, maps, and property ownership records. Client will ensure the cooperation of Client's employees, contractors and consultants ("Client Parties") with Kleinfelder. Kleinfelder is entitled to rely upon the accuracy and completeness of all information given by Client Parties.
8. **INDEMNITY; LIMITATION OF LIABILITY.** Client will defend, indemnify and hold harmless Kleinfelder, its officers, directors, parent, affiliates, shareholders and employees, from and against any all claims, demands, causes of action, damages or other liabilities, including but not limited to attorney's fees and other legal expenses reasonably incurred by Kleinfelder (collectively, "Claims"), that arise from performance of the Services or from Kleinfelder's acts, errors or omissions in connection with the Project or this Agreement, excepting Claims arising from the sole negligence or wilful misconduct of Kleinfelder. The maximum aggregate liability of Kleinfelder in connection with this Agreement and all amendments thereto, whether based in contract or tort or otherwise in law or equity, will be limited to the greater of the compensation actually paid to Kleinfelder for the Services hereunder or \$50,000, and Client hereby releases Kleinfelder from any liability above such amount. Upon Client's written request, the parties may negotiate and enter a written amendment in accordance with clause 11 herein to increase the amount of this limitation of liability in exchange for an increased payment to Kleinfelder. As used in this clause 8, "Kleinfelder" includes Kleinfelder, its affiliates, subcontractors, and each of their respective partners, officers, directors, shareholders and employees. Neither party will be liable to the other for any special, incidental, indirect, exemplary, punitive or consequential damages however arising incurred by either Kleinfelder or Client or for which either may be liable to a third party.
9. **Reliance.** The documents provided by Kleinfelder to Client under this Agreement may be based on information obtained from sources outside Kleinfelder's control. Other than the application of prudent professional care in their evaluation, Kleinfelder does not warrant, expressed or implied the accuracy thereof. All documentation furnished to Client is intended for the benefit of the Client for the purpose stated herein and is not intended or represented to be suited for reuse by Client or others. Any reuse or provision of the documents to others without the specific written consent of Kleinfelder for the specific purposes intended will be at user's sole risk and without liability and legal exposure to Kleinfelder.
10. **Hazardous Materials; Samples.** Kleinfelder will not take title to or be liable for any hazardous materials found at any project site. Any risk of loss with respect to all materials remains with the Client or the site owner, who will be considered the generator of such materials, execute all manifests as the generator of them, and be liable for the arrangement, transportation, treatment, and disposal of all material. All samples remain the Client's property. Client agrees to promptly, at its cost, remove and lawfully dispose of samples, cuttings, and hazardous materials.
11. **Amendments, Changes, Assignment, Waiver, Compliance.** This Agreement represents the entire agreement of the parties, and may be modified only in a writing signed by both parties. To the extent of any inconsistency between this Agreement and any other document, the provisions of this Agreement will always prevail. Any preprinted terms and conditions on forms used by either party in the administration of this Agreement are void and shall not act to supplement or replace these Terms and Conditions. Neither party may assign this Agreement without the other's prior written consent. Waiver of any term, condition or breach of this Agreement will not operate as a waiver of any other term, condition or breach. Client and Kleinfelder shall abide by 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on race, color, religion, sex or national origin. Covered contractors and subcontractors shall take affirmative action to employ and advance individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.



October 31, 2023

David Morgan, Conservation Agent
Town of Arlington, MA
730 Mass Ave. Annex
Arlington, MA 02476

Re: Proposal scope – Peer Review of Stormwater Design
Thorndike Place Notice of Intent Application

Dear Mr. Morgan,

Kleinfelder is submitting with this letter a proposed Scope of Services for technical support to the Arlington Conservation Commission. It is Kleinfelder's understanding that the Arlington Conservation Commission is seeking a peer review of the Stormwater Report and Management Plan associated with the Thorndike Place development to determine compliance with the Massachusetts Stormwater Standards.

Thorndike Place is a proposed multifamily development in east Arlington along Route 2. The subject site contains Bordering Vegetated Wetland, Buffer Zone to BVW, and Bordering Land Subject to Flooding. The application is being considered under the Wetlands Protection Act (WPA). Arlington Land Realty, LLC of Boston is the applicant with support from the BSC Group.

Kleinfelder anticipates the following scope of work to support the Arlington Conservation Commission:

Task 1: Document Review

Kleinfelder will hold an initial meeting with the Arlington Conservation Agent to develop a complete understanding of the project. In addition, we will conduct reviews of the following provided documentation:

- A. Stormwater Report (September 2023)
- B. Thorndike Place Plan Set (September 2023)
- C. Notice of Intent filing (September 2023)

Task 2: Site Visit

Kleinfelder will conduct a site visit to obtain a comprehensive understanding of site conditions, location and proximity to resource areas.

Deliverable:

Based on information gathered in Tasks 1 and 2, Kleinfelder will prepare a summary memorandum to document findings and provide conclusions and recommendations to the Arlington Conservation Commission.

Task 3: Review of Applicant Team's Response to Comments and Client Representation

Kleinfelder will conduct a review of the Applicant's response to our review summary to ensure that all points are being addressed and there is agreement on approach moving forward. Additionally, Kleinfelder will attend two Conservation Commission public hearings to present findings.

Deliverables:

1. Memorandum of findings
2. Letter response to Applicant response to comments
3. Attendance (virtual) at two Conservation Commission public hearings

Assumptions:

Kleinfelder is assuming that the memorandum of findings will include a limited review of the stormwater design only.

Schedule

Kleinfelder will commence work immediately upon receipt of a signed task order. Kleinfelder assumes a project duration of approximately 3 months (February 2023) to allow review and comment period.

Fee

Kleinfelder anticipates needing 40 hours of senior technical staff to support for this effort. Based on this estimate, Kleinfelder proposes to provide support to the Arlington Conservation Commission as described above on a time and materials basis to a maximum of \$10,000 (Ten Thousand Dollars). All time and expenses will be charged as noted in the attached rate table. Should additional effort be warranted based on additional meetings or iterations of design review, Kleinfelder will notify the Commission prior to proceeding with out-of-scope work.

This proposal is valid for a period of 3 months from the date of this proposal. If authorization or review periods significantly extend beyond the established timeframe, Kleinfelder reserves the right to negotiate adjustment to pricing.

Sincerely,

KLEINFELDER



Peter Varga, Project Manager

Attachments: Rate table, terms and conditions

cc: Kyle Johnson, Greg Avenia, Chris Balerna, Kleinfelder
File



Hourly Billing Rate Schedule

Rates effective through 8/1/2024, subject to 5% escalation thereafter

Position	Maximum Billing Rate*
Sr. Program Manager	\$330
Sr. Principal Professional	\$310
Project Manager III	\$260
Principal Professional	\$240
Sr. Professional	\$200
Project Manager II	\$180
Project Professional	\$170
Staff Professional II	\$150
Staff Professional I	\$130
Professional	\$110

**Actual billing rates vary by staff member, maximum rate per position provided*

Mileage Reimbursement: IRS federal mileage rate

Additional rates for personnel not listed will be provided upon request