

TOWN OF MONTEREY  
PART TIME TOWN CLERK

The Town of Monterey is seeking qualified applicants for the part time appointed position of Town Clerk. The Town Clerk serves as the Chief Election Official, Recording Officer, Records Access Officer, Registrar of Vital Statistics, Licensing Officer and Public Information Officer. The Town Clerk will perform all duties in accordance with applicable Massachusetts General Laws, town policies, town bylaws and relevant state, federal and local regulations and standards. Applicants must possess the advanced knowledge, skills, ability and progressive experience necessary to serve as the Town Clerk. Previous experience as a Town Clerk preferred. The position requires up to 10 hours per week ~~during normal town hall operating hours~~ and additional hours will be required during elections and town meetings. This position is a non-benefited position that pays up to \$25 an hour depending on experience. **Resumes and letters of interest will be accepted until the position is filled and should be sent to: Monterey Town Administrator, P.O. Box 308 Monterey, MA 01245 Re: Town Clerk or via email to [admin@montereyma.gov](mailto:admin@montereyma.gov)**

The Town of Monterey is an equal opportunity employer.

## **Job Description**

**Title:** Town Clerk

**Supervision:** The Town Clerk is hired/appointed by the Board of Selectmen and reports directly to The Town Administrator.

**Hours/Compensation:** This position is a part time hourly, non-exempt position. The actual hourly rate will be authorized annually by annual appropriation.

**Benefits:** As this position requires less than 20 hours per week no Town benefits are offered. This position must participate in the OBRA retirement program.

**Job Environment:** Typical office environment; operates computers, printers, calculators, phones and the copier. The position requires frequent contact with other Town Hall employees, State agencies and the general public.

### **Responsibilities:**

*The essential duties and responsibilities listed include the minimum requirements for the position. This position includes additional duties that are a natural progression from that position's essential duties. The omission of specific statements of duties does not exclude them from the responsibility of the employee in the position if the work is similar, related, or a logical assignment to the position.*

- Responsible for all duties, authorities and responsibilities associated with local and state elections.
- Responsible for creating and maintaining a budget for the Clerk's office.
- Serves as ex-officio member and Clerk of the Board of Registrars of voters.
- Responsible for all duties, authorities and responsibilities assigned to the Clerk with regard to town meetings.
- Responsible for all duties, authorities and responsibilities associated with vital statistics. Annual Town Census and voter registration.
- Responsible for the issuance of dog licenses, marriage licenses, business certificates, birth and death certificates
- Responsible for filing and recording all Board of Appeal and Planning Board decisions as well as public utility decisions
- Responsible and accountable for all duties prescribed by MGL.
- Other duties as assigned by the Town Administrator

### **Recommended Minimum Qualifications:**

**Education & Experience:** High school diploma and a valid driver's license.

### **Knowledge, Ability and Skill:**

- Knowledge of Windows programs/operating system as well as other office equipment.

- Excellent organizational skills, the ability to work with minimal supervision and the use of good judgment, confidentiality and tact regarding the requirements of the position.
- Ability to work well with the public and other Town employees.
- Minimal physical effort required to perform functions under typical office conditions.
- Position requires the ability to operate a keyboard.
- Ability to access large, heavy storage boxes/records.

### Job Description

**Title:** ~~Town Clerk~~ Town Clerk

**Supervision:** ~~The Town Clerk~~ Town Clerk is hired/appointed by the ~~Board of Selectmen~~ Select Board and reports directly to The Town Administrator.

**Hours/Compensation:** This position is a part time hourly, non-exempt position. The actual hourly rate will be authorized annually by annual appropriation.

**Benefits:** As this position requires less than 20 hours per week no Town benefits are offered. This position must participate in the OBRA retirement program.

**Job Environment:** Typical office environment; operates computers, printers, calculators, phones and the copier. The position requires frequent contact with other Town Hall employees, ~~State~~ State agencies and the general public.

**Responsibilities:**

*The essential duties and responsibilities listed include the minimum requirements for the position. This position includes additional duties that are a natural progression from that position's essential duties. The omission of specific statements of duties does not exclude them from the responsibility of the employee in the position if the work is similar, related, or a logical assignment to the position.*

- Responsible for all duties pertaining to the functions of the Town Clerk in accordance with the provisions of more than 73 chapters and 451 sections of the Massachusetts General Laws.
- Serve as administrator of the legal functions of the Town Clerk: establish methods and practices for the maintenance and safeguarding of town records in accordance with established statutes.
- Serve as Records Manager: is custodian of official town records and responsible for the storage of and filing of all records of the Town. Responsible for the Town records storage and the maintenance, disposition, and preservation of municipal archival records and materials.
- Serve as Records Access Officer: Provide access to public records in compliance with State Public Records Law and corresponding regulations.
- Serve as ex-officio member and Clerk of the Board of Registrars of voters.
- Coordinate/administer federal, State, and town elections. Coordinate all details and procedures for elections; oversee and ensure that all statutory requirements are adhered to; supervise and train all election officials; monitor polling places to ensure conformance; provide voting registration sessions; distribute and certify all nomination papers; administer absentee voting procedures; record the results of election returns; review and file all campaign and political finance statements; maintain voter database; maintain and test all equipment for voting.

Formatted: Bulleted + Level: 1 + Aligned at: 0" + Indent at: 0.25"

- Conduct the annual census and prepare the street list of residents. Maintain and update census data within the State voter registration information system on a continuing and regular basis.
- Administer the State voter registration information system at local level. Prepare the voting list for the town for all primaries, elections, and town meetings, making corrections based on census and voter data.
- Perform certification of legal and other documents. Research, seal, and attest to town records such as bylaws, resolutions, easements, deeds, town meeting articles, bonds, roads, and other documents requiring town certification.
- Attend all annual and special Town Meetings; prepare and certify minutes, certify monies allocated; prepare and submit general bylaws and zoning bylaws to the Attorney General for approval/denial; and notify proper State officials of borrowings articles.
- Control the issuance of a variety of licenses and permits (marriage licenses, gasoline storage permits, permits for raffles and bazaars, dog licenses, kennel licenses, business certificates, pole locations, transfer station stickers and tag sale permits).
- Administer oath of office to all elected and appointed officials, including those officials serving on any multi-member Town body, and ensure that all elected and appointed officials are informed in writing of the Open Meeting Laws and Conflict of Interest Laws; receive resignations from same and notify the appointing authority.
- Record applicant's filing of subdivision plans and file notice of the Planning Board's action on such plans; certify subdivision plans endorsed by the Planning Board prior to the applicant's recording with the Registry of Deeds; record, file and certify, all decisions of the Zoning Board of Appeals before the decision is recorded at the Registry of Deeds. Receive and record all public utility decisions and pole hearings.
- Receive and record all appeals to all decisions of the Planning Board and the Zoning Board of Appeals, and distribute copies to concerned parties.
- Maintain a record of the posting of all legal notices of Town multi-member body meetings. Maintain a record of the approved minutes of Town multi-member bodies.
- Maintain the Town Clerk's webpage on the Town website.
- Prepare and administer annual budgets for the office – Town Clerk, elections, and board of registrars.
- Receive and record all monies collected, making timely turnovers to the Town Treasurer as required by law.
- Review all new or amended State laws for town use.
- Receive notices of claims and legal actions against or relating to the town.
- Register all vital records and report to the Commonwealth's central vital registration system, including birth and death certificates. Provide certified copies of vital records and conduct or assist with genealogical research for members of the public.
- Hold custody of the town seal and authorize its use.
- Attend, as possible within the work schedule, seminars, meetings, conferences and training courses which encourage specialized assistance and continuing education relative to professional or personal improvement.
- Plan, schedule, organize and implement the installation and subsequent upgrades of software in department and maintain the day to day operations in the office.

Revised and approved 11/2/22

- Respond to all inquiries from the general public, frequently serving as facilitator with departments, providing knowledge and assistance in a fair and impartial manner to all.
- Considered the core of local government, the Town Clerk's office serves as the central information center for local residents and citizens at large.
- Responsible for all duties, authorities and responsibilities associated with local and state elections.
  - Responsible for creating and maintaining a budget for the Clerk's office.
  - Serves as ex-officio member and Clerk of the Board of Registrars of voters.
  - Responsible for all duties, authorities and responsibilities assigned to the Clerk with regard to town meetings.
  - Responsible for all duties, authorities and responsibilities associated with vital statistics, Annual Town Census and voter registration.
  - Responsible for the issuance of dog licenses, marriage licenses, business certificates, birth and death certificates
  - Responsible for filing and recording all Board of Appeal and Planning Board decisions as well as public utility decisions
  - Responsible and accountable for all duties prescribed by MGL.
  - Other duties as assigned by the Town Administrator

Formatted: Indent: Left: 0.5", No bullets or numbering

**Recommended Minimum Qualifications:**

**Education & Experience:** High school diploma and a valid driver's license.

**Knowledge, Ability and Skill:**

- Knowledge of Windows programs/operating system as well as other office equipment.
- Excellent organizational skills, the ability to work with minimal supervision and the use of good judgment, confidentiality and tact regarding the requirements of the position.
- Ability to work well with the public and other Town employees.
- Minimal physical effort required to perform functions under typical office conditions.
- Position requires the ability to operate a keyboard.
- Ability to access large, heavy storage boxes/records.



Steven A. Mack, P.E. \*  
Marc S. Volk  
Marc A. LeVasseur

January 10, 2023

James Hunt  
Director of Operations  
P.O. Box 308  
Monterey, MA 01245  
Email: [dpw1@montereyma.gov](mailto:dpw1@montereyma.gov)

Re: Proposed Scope of Services for Engineering Services  
Beartown Mountain Road Improvements  
Monterey, MA

Dear James,

We are pleased to provide you with our proposal for performing engineering services for Beartown Mountain Road in Monterey, MA. Project includes approximately 2 miles of unpaved roadway base improvement with associated waterways. Note: There are several culverts that will be replaced and new culverts will be installed. This scope includes evaluation of the culverts and wetlands delineation to determine Wetlands Protection Act Jurisdiction. If there are culverts to be replaced/installed, that are subject to the Mass Stream Crossing Standards, we will provide the Town with an updated estimate to design and permit that work. Culverts that are not subject to the Mass Stream Crossing Standards will be shown to be replaced or installed within the bid documents. Our scope of services is as follows:

**Item 1. Technical Work Summary**

We will do a field reconnaissance of the project. We will review the existing site conditions and record measurements for use in determining quantities for the cost estimates. We will prepare a summary narrative of work required for Beartown Mountain Road. (No field survey work is proposed, all measurements will be done with tape measure, wheel, etc...). Note, it is assumed that the Town can provide a backhoe and operator for the performance of test pits to determine subsurface conditions (for roadbase design).

**Cost Item 1: \$5,900**

**Item 2. Quantity Estimate**

We will prepare an estimate of quantities; including an overall summary of work quantities for use in bidding. Estimates will include a unit price for each item of work. We will also provide an estimated total construction cost for the entire project.

**Cost Item 2: \$2,000**

*Professionals Registered in Massachusetts and New York\**

Foresight Building · 1496 West Housatonic Street · Pittsfield, MA 01201 · Tel (413) 499-1560 · Fax (413) 499-3307

Email: [info@foresightland.com](mailto:info@foresightland.com) · website: <http://www.foresightland.com>

**Item 3. Technical Specifications and Bid Documents**

Prepare a bid package including the construction plans with notes, applicable construction details, special provisions, proposal bid sheet, technical specifications, and traffic management details. Also included will be requested wage rates and the invitation to bidders (legal ad). The Central Register notice and the MassDOT Prequalification Form with attachments will be submitted. An updated opinion of probable cost will be completed for bid purposes.

**Cost Item 3: \$3,000**

**Item 4. Bid Phase Services**

Under this item Foresight will provide bid assistance including administering the bid, lead the pre-bid site visit, answer bidder's questions, prepare addenda as necessary, attend the bid opening, and prepare a bid summary and contractor recommendation.

**Cost Item 4: 2,500**

**Item 5. Limited Construction Support**

Item includes construction phase services including, attendance at a pre-construction conference, shop drawing approval, engineering modifications, pay estimate approval, change order preparation, progress reports, punch lists, etc. During the construction period, limited on-site construction observation will be performed by our construction site representative. The representative will prepare construction observations logs, review quantity and pay requisitions, review adherence to the specifications, plans and details, etc. Following the construction period, construction close-out services will be performed which will include preparation of the final punch list and preparation of a Certificate of Completion.

This item is based on 10 hours per week for approximately 1 month. This is proposed to be billed hourly – not to exceed the fee shown unless hours are required (and agreed upon by client) beyond those noted.

**Cost Item 5: \$11,250**

**Item 6. Wetland Delineation and Culvert Evaluation**

Under this item we will perform a site visit to delineate wetlands, and perform flagging of wetland resource areas and perform onsite culvert evaluation of the existing culverts with the Town DPW. The purpose of the review of culverts is to determine the size, condition and adequacy of the culverts and make recommendations as to the repair, and/ or replacement of deficient culverts. Although no hydrologic or hydraulic analysis is included with this scope, indications of insufficient capacities will be noted (i.e. scour/undermining, excessive velocity/stream bed material transport, overtopping, blockage, etc.). A fee estimate can be provided if additional culvert analyses are recommended and agreed upon.

We would recommend the following items as first steps in completing the necessary culvert and drainage repairs:

6a. Wetland delineation and flagging of wetland resource areas

Item 6a. Estimated Fee: \$1,250



6b. Field observation and documentation of existing culverts with the DPW. This item will include photo documentation, measurement of culvert diameter, length and depth and filling out a field observation check list for preparation of a comprehensive listing of existing culverts, conditions, size, type, etc...

Item 6b. Estimated Fee: \$3,000

6c. Preparation of a list of recommended repairs and improvements to the drainage/culverts noted above. Note: We will include, in this summary the impacts of the wetlands delineation and applicability of the Mass Stream Crossing Standards if applicable.

Item 6c. Estimated Fee: \$1,000

6d. Meet with the Town Officials to review the findings and determine the drainage improvements to include with the MassWorks project scope.

Item 6d. Estimated Fee: \$750

**Total Cost Item 6: \$6,000**

**Total Cost Including Construction Phase (Items 1-6): \$30,650**

Possible Additional Services & Expenses Not Included in the Basic Scope of Services:

- Property Line Survey
- Topographic Survey
- Wetlands Permitting or Culvert design conforming to the Mass Stream Crossing Standards
- As-Built Location of New Construction
- Baseline Control
- Archeological and/or Historical Coordination
- Army Corps Permitting
- Endangered Species Permitting or Review and Massachusetts Endangered Species Act (MESA) Permitting or Review Floodplain Permit
- 401 Water Quality Certification
- NPDES Stormwater Construction General Permit for Disturbances Over One Acre and Accompanying Storm Water Pollution Prevention Plan (SWPPP)
- Soils Evaluation and Test Borings for Design of culvert replacements subject to Mass Stream Crossing Standards
- Storm Drainage Analysis
- Wetlands Protection Act Notice of Intent
- Wildlife Habitat Analysis
- Special Permits or other Zoning/City Permits
- Backhoe or Excavator Fees
- MassDOT Review Process
- Traffic Study
- Utility Research
- Filing Fees of any kind

January 10, 2023

FORESIGHT LAND SERVICES, INC.

- Meetings and Correspondence
- Reimbursable Expenses, Mileage, Postage, Printing, Binding, etc...
- Traffic Control of any kind

If this is acceptable, this letter will serve as our agreement for professional services. Please sign and date this letter below and return a signed copy as our authorization to proceed.

We look forward to working with you on this project. Please call if you have any questions.

Sincerely,  
**Foresight Land Services, Inc.**



Steven A. Mack, P.E.  
President and Principal Engineer

**ACCEPTANCE AND NOTICE TO PROCEED:**

I hereby accept the terms and conditions contained in this letter agreement and the attached General Provisions for Limited Professional Services, authorize commencement of the work, and grant permission to enter on the land.

Client's Name (Typed or Printed): \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Billing Address: \_\_\_\_\_

**I. CONDITIONS OF AGREEMENT:** These General Provisions together with the attached proposal constitute the terms of the Agreement between FORESIGHT LAND SERVICES, INC. a corporation duly organized under the laws of the Commonwealth of Massachusetts ("FORESIGHT"), and the "CLIENT" with respect to the performance of the Services described in the attached proposal. The General Provisions also apply equally to the Basic Services as well as any Additional Services authorized subsequently, whether referred to explicitly or not. The proposal with Scope of Basic Services, any Additional Services authorized subsequently, any attachments, and these General Provisions contain all of the terms and conditions of this Agreement, and no oral representations made by either party prior to execution of this Agreement are a part hereof.

**II. SCOPE OF SERVICES; STANDARD OF PRACTICE:** FORESIGHT will act as an independent consultant representing the CLIENT (but will not be an "Agent" or employee of CLIENT). FORESIGHT agrees to perform the services described in the attached proposal. The Basic Scope of Services and the resultant fee are based on our current understanding of the Project and the assumptions in the proposal. FORESIGHT will carry out its services consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in Western Massachusetts under similar conditions. FORESIGHT makes no other representations concerning its services, express or implied; and offers no warranty or guarantee as part of this Agreement, or any report, opinion, or document generated as a result thereof.

**III. ADDITIONAL SERVICES:** Services not explicitly agreed to as detailed in this Agreement will be considered Additional Services and subject to increased project fees. Any Additional Services will be provided subject to the CLIENT's authorization.

**IV. CERTIFICATIONS, GUARANTEES AND WARRANTIES:** Foresight shall not be required to sign any documents, no matter by whom requested, that would result in Foresight having to certify, guarantee or warrant the existence of conditions whose existence Foresight cannot ascertain within the Basic Scope of Services and Standard of Practice. Foresight shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in Foresight's sole judgment, increase Foresight's risk or the availability or cost of its professional or general liability insurance. The Client also agrees not to make resolution of any dispute with Foresight or payment of any amount due to Foresight in any way contingent upon Foresight's signing any such certification. Notwithstanding, as applied to any services under this agreement, the words "certify" and "certification" shall be construed to mean an expression of the Consultant's professional opinion to the best of its information, knowledge and belief, and under no circumstances shall such a statement constitute a warranty or guarantee by the Consultant.

**V. ACCESS TO SITE:** Unless otherwise stated, FORESIGHT will have access to the Project Site for activities necessary for the performance of the services, and such access will be arranged by the CLIENT. The CLIENT understands that use of testing or other equipment may unavoidably cause some damage. FORESIGHT will take precautions to minimize damage due to these activities, but shall not be held responsible for the restoration of any resulting damage.

**VI. LEGAL REPRESENTATION:** CLIENT is responsible for obtaining any and all legal advice and representation necessary for this Project, and when applicable, making its attorney available to FORESIGHT whenever necessary relative to the Project. Any opinions, conclusions or recommendations which FORESIGHT may express, or any assistance it may render to CLIENT on applications or processing of permits or approvals for the Project pursuant to this Agreement do not constitute legal advice. Consult your attorney about these matters.

**VII. CAVEAT ABOUT SERVICES RELATED TO PERMITS AND APPROVALS:** Granting of permits and approvals by municipal or other regulatory agencies often includes discretionary and subjective judgments. Such approvals depend upon many factors over which FORESIGHT has no control. FORESIGHT can therefore give no assurance that approvals will be granted or that any conditions imposed by the permit-granting authority will be acceptable to the CLIENT, or that permits will not be appealed. In consideration of CLIENT's assumption of the potential risks and rewards of the Project, CLIENT hereby waives any claim against FORESIGHT relative to any damages, direct or indirect, which may result from an unfavorable decision, appeal, or denial of any applications for permits or approvals. FORESIGHT shall be liable only for any proven damages resulting solely from FORESIGHT's negligent acts, errors or omissions, subject to the provisions of the Limitation of Professional Liability contained herein.

**VIII. OPINION OF PROBABLE COSTS:** Any opinions of the probable costs (not to be confused with "estimates") to construct the work recommended, designed, or specified by FORESIGHT are based on our experience and judgment as design professionals familiar with construction. The opinion may be based on a number of assumptions which FORESIGHT cannot control, such as hidden or changed site conditions, the means and methods of construction selected by the Contractor, the cost and extent of labor, equipment, and materials the contractor may employ, contractor's techniques in determining prices, market conditions at the time of bidding, and many other factors. Given the assumptions which must be made, FORESIGHT does not represent that its opinions of probable costs will be accurate. CLIENT therefore waives any claim against FORESIGHT relative to the accuracy of any opinion of probable construction costs prepared by FORESIGHT. If more accurate construction "estimates" is needed, CLIENT should hire a professional estimator.

**IX. SERVICES DURING CONSTRUCTION:**

If FORESIGHT's services include the performance of any services during the construction phase of the Project, it is agreed that the purpose of any such services (including any visits to the site) will be to enable FORESIGHT to better perform the duties and responsibilities assigned to and undertaken by it as an experienced and qualified design professional, and to provide the CLIENT with a greater degree of confidence that the completed work of the construction contractor or contractors (hereinafter "Contractor") 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 the Contractor. Any Construction Observation Site Visits will be conducted at intervals appropriate to the stage of construction to allow FORESIGHT to observe the general progress and quality of the Contractor's work, and to enable FORESIGHT to give the CLIENT a greater degree of confidence that the work is being performed in a manner consistent with the construction documents. These Construction Observations shall not be construed as being equivalent to "Inspections" or full-time On-Site Project Representation, and are not represented as being complete or comprehensive. During Construction Observation Site Visits, FORESIGHT shall not be responsible for any of the Construction Activities on the jobsite. FORESIGHT shall have no responsibility for supervising, directing or controlling in any way the Contractor's work. FORESIGHT shall have no authority over nor responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, nor jobsite safety precautions and programs incidental to the work of Contractor, nor for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes, permit conditions, or orders applicable to Contractor furnishing and performing its work. FORESIGHT does not guarantee the performance of the construction contract by the

PLEASE INITIAL EACH PAGE IN THIS SPACE \_\_\_\_\_

Contractor, and is not responsible if Contractor fails to furnish and perform its work in accordance with the Contract Documents, nor for any Change Orders that are issued during construction.

**X. WORK SCHEDULE:** FORESIGHT will endeavor to complete its services within the estimated schedule in the Agreement. If FORESIGHT is obstructed or delayed by any act of the CLIENT or the CLIENT's Contractor or agents, or by any act beyond the control of FORESIGHT including, but not limited to, inclement weather, illness, strikes, unanticipated degree of difficulty encountered in performing said services, or delay created within or by approving agencies, then the scheduled date for completion of the services will be extended an equivalent number of days. Compensation for any resulting additional services may also be required.

**XI. PAYMENT TERMS; SUSPENSION OF SERVICES:** The CLIENT agrees to pay FORESIGHT for the services rendered under this Agreement according to the amounts and payment methods specified in the Agreement. FORESIGHT will send you periodic invoices. Payment is due when you receive the bill. If you do not pay the balance due within thirty calendar days after the invoice date, FORESIGHT will add a FINANCE CHARGE OF 1½% PER MONTH (18% PER YEAR) to the amount due. In addition, FORESIGHT, at its sole discretion, may give you seven (7) days written notice, and suspend services under this Agreement unless you remit full payment within seven days. FORESIGHT is not liable for any delay or consequential damages which result from such suspension of services. The CLIENT agrees to pay all costs of collection, including reasonable attorneys' fees.

**XII. DELIVERY AND REUSE OF ELECTRONIC FILES**  
In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the Consultant, the Client agrees that all such electronic files are instruments of service of the Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, without limitation, including copyrights.

CLIENT agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer these electronic files to others without the prior written consent of the Consultant.

The Client further agrees to waive all claims against the Consultant resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Consultant.

FORESIGHT makes no representation about the electronic files transmitted to CLIENT being compatible with Client's programs and computer systems. If FORESIGHT is required to expend additional effort to reformat electronic files into other formats for CLIENT's use, these efforts shall be compensated for as Additional Services.

Electronic files furnished by either party shall be subject to an acceptance period of ten (10) working days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic files shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy work product documents. In the event of a conflict between the final issued work product documents prepared by the Consultant and electronic files, the final hard-copy documents shall govern.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless FORESIGHT, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the Consultant or from any reuse of the electronic files without the prior

written consent of the Consultant. Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

**XIII. OWNERSHIP AND USE OF DOCUMENTS:** FORESIGHT will retain ownership of all documents it prepares or furnishes for this Project. This includes but is not limited to plans, drawings, reports, opinions of probable construction cost, specifications, field notes, computations, test data, computer files, and other such data, whether produced by hand or electronically, in hard copy or on electronic media. These documents are instruments of service prepared by FORESIGHT, and FORESIGHT shall retain all common law, statutory and other reserved rights, including without limitation, the copyrights thereto. FORESIGHT agrees to provide CLIENT with a limited license to use the "Work Products" listed in the Agreement for the intended purposes of the Project, and for information and record reference purposes in connection with the completed Project. Such limited license of the "Work Products" to the CLIENT, however, does not convey to the CLIENT any ownership rights, copyrights, or rights to reuse the Work Products for any other project. In consideration of full payment for its services, FORESIGHT agrees that it will not release any confidential or proprietary "Work Products" specified in the agreement to any other party without CLIENT's prior consent. CLIENT may use the Work Products for reference information for the specified Project but for no other projects. CLIENT agrees not to re-use (or allow other parties to use) the "Work Products" or information (a) to complete the Project if FORESIGHT's agreement has been terminated or FORESIGHT is no longer involved in the Project; (b) extensions or revisions of the Project without FORESIGHT's involvement; or (c) any other project. If CLIENT wants to re-use or adapt FORESIGHT's previous work, the CLIENT is obligated as a condition precedent to negotiate with FORESIGHT appropriate additional compensation, indemnification clause, and other terms for such re-use or adaptation. If CLIENT re-uses or adapts the work without FORESIGHT's written authorization, consent or involvement, CLIENT assumes all associated responsibilities and risks, and agrees to defend, indemnify and hold harmless FORESIGHT and its sub-consultants, agents, officers and employees, from all direct or indirect claims, damages, losses and expenses, including reasonable attorney's fees and expert witness fees, arising out of or resulting therefrom such unauthorized reuse. Unless specifically stated in this Agreement, FORESIGHT will not provide CLIENT with any "Work Products" on electronic media. If such transfer of data is later agreed to, Special Terms and Conditions for Use of Electronic Data Files will apply in addition to these General Provisions and there may be additional compensation.

**XIV. HIDDEN CONDITIONS & HAZARDOUS MATERIALS:** FORESIGHT's services do not include studies or investigations regarding Hidden Conditions or Hazardous Materials. A condition is hidden if it cannot be investigated by reasonable visual observation or records reviewed as customary in the performance of the services being rendered. This includes without limitation underground utilities. Hazardous Materials may include, but are not limited to, asbestos, or spills of oil or other pollutants. If CLIENT is aware of or has reason to believe that such Hidden Conditions or Hazardous Materials exist on the site, CLIENT shall notify FORESIGHT. If FORESIGHT has reason to believe that Hidden Conditions or Hazardous Materials may exist on the Project Site, FORESIGHT shall notify the CLIENT. In either case, CLIENT shall authorize and pay for costs associated with the investigation of such a condition and, if necessary, costs necessary to correct said condition. If (1) the CLIENT fails to notify FORESIGHT, or (2) CLIENT fails to authorize such investigation or correction after due notification by FORESIGHT of such a condition, or (3) FORESIGHT has no reason to believe that such a condition exists, the CLIENT is responsible for

all risks associated with this condition, and FORESIGHT shall not be responsible for the existing condition nor any resulting damages to persons or property. Unless specifically agreed upon prior to the commencement of service, FORESIGHT shall have no responsibility for the discovery, presence, handling, removal, disposal, or exposure of persons to hazardous materials of any form. In addition, it is agreed that FORESIGHT's liability insurance may not cover costs from claims involving hazardous materials. Therefore, the CLIENT agrees, to the fullest extent permitted by law, to release, defend, indemnify and hold harmless FORESIGHT and its sub-consultants, agents, officers and employees, from and against all claims, damages, losses and expenses, direct and indirect, including but not limited to attorneys' fees and defense costs, arising out of or resulting from the performance, or non-performance, of any services by FORESIGHT or claims against FORESIGHT involving Hidden Conditions or Hazardous Materials.

**XV. CHANGED CONDITIONS; PROJECT CHANGES:** During the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to FORESIGHT may be revealed, or may arise during the preparation of construction documents or during the construction phase. Changed Conditions may include but are not limited to redesign for owner-requested changes or permit-imposed conditions, changes in design scope during the CD phases resulting from coordination with other disciplines or 'value engineering', issuance of Change Orders during construction, or other unforeseen conditions. To the extent that such Changed Conditions affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, FORESIGHT may call for renegotiation of appropriate portions of this Agreement. FORESIGHT shall notify CLIENT of the changed conditions necessitating renegotiation, and FORESIGHT and CLIENT shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement in accordance with the Termination provision hereof.

**XVI. INDEMNIFICATIONS:** FORESIGHT and CLIENT mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorneys' fees and defense costs) to the extent caused by their own negligent acts, errors or omissions and those of anyone for whom they are legally liable, and arising from the project that is the subject of this agreement. Neither party is obligated to indemnify the other in any manner whatsoever for the other's own negligence.

**XVII. TERMINATION:** In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay FORESIGHT for all services rendered and all reimbursable costs incurred by FORESIGHT up to the date of termination, in accordance with the payment provisions of this Agreement. Client may terminate this Agreement for the Client's convenience and without cause upon giving FORESIGHT not less than seven (7) calendar days' written notice. Either party may terminate this Agreement for cause upon giving other party not less than seven (7) calendar days' written notice for any of the following reasons: Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party; Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party; Suspension of the Project or the Consultant's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate; Material changes in the conditions under which this Agreement was entered into including a significant change in the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such

changes. In the event of any termination that is not the fault of FORESIGHT, the Client shall pay FORESIGHT, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by FORESIGHT in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

**XVIII. ALLOCATION OF RISKS; LIMITATION OF PROFESSIONAL LIABILITY:** CLIENT and FORESIGHT have discussed the respective risks, rewards, and benefits of the Project while developing the objectives and Scope of Services. This Agreement represents an equitable allocation of those risks and rewards. In consideration of FORESIGHT's risks, and in order to persuade FORESIGHT to enter into this agreement, CLIENT agrees to limit FORESIGHT's total liability to the CLIENT for or on account of all claims and/or damages of any nature whatsoever caused by or arising out of FORESIGHT's performance of its services on this Project, including but not limited to FORESIGHT's negligent acts, errors or omissions, such that the total aggregate liability of FORESIGHT shall not exceed Fifty Thousand Dollars (\$50,000) or FORESIGHT's total fee, invoiced and paid, for services rendered on this Project, whichever is greater. FORESIGHT agrees to maintain Professional Liability Insurance in effect throughout the term of this Agreement. An Insurance Certificate will be sent to CLIENT upon request. In consideration of FORESIGHT procuring and maintaining said insurance, CLIENT agrees to hold personally harmless and hereby releases any and all claims against any director, officer, employee, or agent of FORESIGHT arising from any negligent act, error, or omission now existing or hereinafter arising in connection with the Project. CLIENT agrees that for any and all claims for damages that it may have arising from any negligent act, error, or omission by FORESIGHT, CLIENT shall assert said claim against FORESIGHT directly and not against any of FORESIGHT's directors, officers, employees, or agents.

**XIX. CONSEQUENTIAL DAMAGES:** Notwithstanding any other provision of the Agreement, CLIENT and FORESIGHT agree that neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the CLIENT or FORESIGHT, their respective employees, directors, officers, agents, consultants, or contractors. Consequential damages may include but are not limited to loss of use, loss of profit, damages due to delays, and/or effect on financing.

**XX. DISPUTE RESOLUTION:** CLIENT and FORESIGHT agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation, unless the parties mutually agree otherwise in writing. CLIENT and FORESIGHT further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

**XXI. APPLICABLE LAW:** The offer to perform services under this Agreement has been signed in the Commonwealth of Massachusetts and all terms and conditions of the Agreement shall be interpreted according to Massachusetts laws.

**XXII. ACCEPTANCE PERIOD:** This Agreement is open for acceptance for a period of thirty (30) days after the offering date on the Agreement, after which time it becomes null and void.

PLEASE INITIAL EACH PAGE IN THIS SPACE \_\_\_\_\_