



Finance Committee Report

City of Newton In City Council

Monday, June 27, 2022

Present: Councilors Grossman (Chair), Oliver, Humphrey, Noel, Malakie, and Gentile

Absent: Councilors Norton and Kalis

Also Present: Councilors Laredo, Markiewicz and Bowman

City staff present: Comptroller Stephen Curley, Manager of Financial Planning and Analysis Perry Rosenfield, Commissioner of Public Buildings Josh Morse, Director of Transportation Planning Nicole Freedman, Commissioner of Inspectional Services John Lojek, Transportation Coordinator David Koses, Sergeant Michael Wade, Carol Moore City Clerk/Clerk of the Council and Chief Operating Officer Jonathan Yeo

Referred to Zoning & Planning and Finance Committees

#289-22

CPC Recommendation to appropriate \$3,000,000 in CPA funding

COMMUNITY PRESERVATION COMMITTEE recommending appropriation of three million dollars (\$3,000,000) in Community Preservation Act funding, with \$2,373,470.71 coming from the FY22 Unrestricted Funds and the remaining \$626,529.29 to come from the Prior Year Undesignated Funds to the control of the Planning & Development Department for a grant to the project team of Metro West Community Development and Civico Development for the development and construction of 43 units of 100% affordable housing at the former West Newton Armory site.

Zoning & Planning Approved 8-0 on 06/27/22

Action:

Finance Approved 6-0

Note:

Please see the 06/27/22 Zoning & Planning Report for the notes on this item.

Referred to Zoning & Planning and Finance Committees

#290-22

Appropriation of \$890,000 of the City's Inclusionary Housing Funds

HER HONOR THE MAYOR requesting the appropriation of eight hundred ninety thousand dollars (\$890,000) of the City's Inclusionary Housing Funds to Metro West Collaborative Development/ Civico Development to support the redevelopment of the West Newton Armory into 43 units of permanently affordable housing

Zoning & Planning Approved 8-0 on 06/27/22

Action:

Finance Approved 6-0

Note:

Please see the 06/27/22 Zoning & Planning Report for the notes on this item.

Referred to Public Facilities and Finance Committees

#336-22

CPC Recommendation to appropriate \$133,002 in CPA funding

COMMUNITY PRESERVATION COMMITTEE recommending appropriation of one hundred thirty-three thousand and two dollars (\$133,002) in Community Preservation Act funding be appropriated from the Unrestricted Prior Year Funds to the control of the Planning & Development Department for the completion of the 100% design of the Commonwealth Avenue Carriageway Redesign project in Auburndale.

Public Facilities Approved 4-0-1 (Councilor Laredo abstaining and Councilor Kelley not voting) on 06/22/22

Action: **Finance Held 6-0**

Note: Lara Kritzer, CPA Program Manager, Jen Molinsky CPC Chair and Nicole Freedman, Director of Transportation Planning joined the committee to discuss the appropriation of \$133,002 in CPA funding for the completion of the 100% design of the Commonwealth Avenue Carriageway Redesign project in Auburndale.

Ms. Molinsky presented the attached PowerPoint.

Councilors asked the following questions:

Q: Can the \$247,900 coming from City of Newton and the Solomon Fund be described in greater detail?

A: Ms. Kritzer explained that \$200,000 came from the City and the remainder came from the Solomon Fund. This was for the initial design and feasibility study that has already been spent.

Q: How will the \$133,002 be used?

A: Ms. Freedman explained that the \$390,000 was the budget needed to go from 25% design to the final design. There was additional work conducted because of the Ash Street intersection which has increased the cost for the consultants. The full \$390,000 has not been spent yet. However, once it was known that the scope of work to get to final design would exceed the contingency there was a conversation with the consultant. The consultant (Howard Stein Hudson) explained that there would be the need for an additional \$133,002. The goal is to make sure there is enough funding to take this project to final design.

Q: At this point does the City owe Howard Stein Hudson more than \$600,000 for the work that has already been completed?

A: Ms. Freedman explained that they have not exceeded that amount.

Q: What work is left to be done to get to final design?

A: Ms. Freedman explained that they still need to get to 75% design, 100% design, bid prep and final plan submittal that is stamped.

Q: When the Ash Street intersection discussion was ongoing, was the City Council/Ward 4 Councilors aware that there would be a need for additional funds?

A: It was noted that the Ward 4 Councilors were not aware of this.

Q: It was noted that the original request for this money is dated March 2022. Why is the City Council just hearing about this need for additional funding?

A: Ms. Kritzer explained that this request was filed with the CPC in March and they held their public hearing in April. The docket item was received by the Clerk on May 19th and due to the budget schedule did not get referred until June 6th.

Q: Why are the funds for this project being spent out of CPA funds?

A: Ms. Molinsky explained that the pedestrian and bike paths are items that CPA recreation funds can be spent on.

Q: In the proposal, there is \$45,000 listed as spent on the Ash Street redesign. Is this for additional funding or funding that has already been spent?

A: Ms. Freedman explained that it is work that has already been completed.

Q: Was the parking study done due to the additional meetings on Ash Street?

A: Ms. Freedman explained that she believes this is not the case.

Q: What are the City of Newton meetings shown in the attached back-up material?

A: Ms. Freedman explained that these were additional public meetings, meetings with Councilors and other city staff. These additional costs were all related to the Ash Street intersection.

Q: What if the contingency is not spent?

A: Ms. Freedman explained that any unspent funds will stay with the CPA.

Q: Were there concerns raised by the CPC regarding the amount of City funds being spent on this project?

A: Ms. Molinsky explained that they did ask questions about the unexpected spending related to Ash Street. They did come to an understanding on the funds that were needed to complete final design.

Q: Does the Comptroller have any concerns about the funds that have been spent up until this point?

A: Steve Curley, Comptroller explained that he did not see that funds were being spent that were not allocated. There are measures put in place where a department can't overspend a line item.

Q: How much out of the allocated funds have been spent?

A: Ms. Kritzer explained that out of the \$390,000 that has been allocated from CPA funds, they have spent \$193,000. The original allocation from the City was spent before the CPA project began. Ms. Freedman explained that the concept design cost \$47,000 which has been spent and completed. Phase 1, which is getting to 25% design, costs \$200,000 was spent and has been completed. Phase 2, which is to get to final design, costs \$390,000, of which \$193,000 has been spent to date. There is \$196,000 not spent.

Q: Since there is \$196,000 left, is there a way that additional funds will not be needed?

A: Ms. Freedman explained that they cannot reach final design without additional funding. She further explained that if these funds are approved, they will start right away with finishing final design. If these funds are not approved, she would not recommend continuing the project if there is not enough funding to finish.

Councilors made the following comments:

A Councilor noted that the City Council has approved approximately \$700,000 for this project and this was not the expectation when the first round of funds was approved. The City Council needs to know about these changes as soon as the administration is aware of them.

The City Council should have been made aware that the Ash Street intersection discussions were increasing the costs of consultants. Additionally, it was noted that this should be considered a change order for \$133,002, which the City does have a moral obligation to pay because the hours have already been spent.

The bills that are attached to this report do not show enough detail to show how these funds were spent on a day-to-day basis. The committee should receive further information on this before taking a final vote. Separately, there should be a review of how consultant contracts are entered into and managed throughout the City, as a matter of practice.

There were concerns raised regarding the amount of funds that are being requested on a number of items in the last two Finance Committee meetings. There should be a separate docket item trying to figure out the role of the Finance Committee and when the Committee is brought into these conversations.

A Councilor also raised concerns regarding “no-bid” contracts, which is what happened with the hiring of Howard Stein Hudson.

It was noted that there is nothing in the contract that prevents the consultant from raising their hourly fee during the project. This should be addressed to see if the hourly rate was raised during this process. There is also a statement in the contract that if the works goes beyond June 30, 2021, the consultants could revise the budget and if the work goes past June 30, 2022 that the consultant could revise the budget. These contracts needs to be looked at more closely.

Ms. Freedman noted that they did not have a conversation with the consultants about the raising of rates.

Councilor Gentile moved to hold the item until the accounting work that needs to be done, which includes finding out if the rates were raised and what invoices still need to be paid, is completed, which passed unanimously.

#364-22 CPC Recommendation to reallocate unused CPA funds

COMMUNITY PRESERVATION COMMITTEE to reallocate the \$475,876.14 in unused CPA funds remaining in the Covid-19 Emergency Housing Assistance Project Account (Account # 58C11413-579700) to the CPA Program's Unrestricted Prior Year Funding Account (Account# 5800 3599) for use in another CPA eligible project in the future.

Action: Finance Approved 6-0

Note: Lara Kritzer, CPA Program Manager presented the request to reallocate unused CPA funds. Ms. Kritzer explained that they did set aside funds for Covid-19 that were not all used. These expenditures are now being covered by ARPA funds. The CPA cannot allocate these funds to another project until this is approved by the City Council. Steve Curley, Comptroller noted that this is just closing out the project and as a result the money will drop to fund balance.

Councilor Gentile motioned to approve which passed unanimously.

Referred to Programs & Services and Finance Committees

#371-22 Request for salary increase for City Clerk/Clerk of the City Council

COUNCILORS ALBRIGHT AND LIPOF requesting an increase in the salary of the City Clerk/Clerk of the City Council to ~~\$131,313~~ \$130,810 effective July 1, 2022 to match the percentage increase included in the FY23 budget for H-grade employees.

Programs & Services Approved 7-0 on 06/22/22

Action: Finance Approved as Amended to \$130,810 6-0

Note: Carol Moore, City Clerk/ Clerk of the Council joined the committee to discuss her salary increase which matches the percentage increase included in the FY23 budget for H-grades employees. Perry Rosenfield, Manager of Financial Planning and Analysis explained that there is a need to amend the item to \$130,810 to match the regular annual amount that is being received; the original amount included an extra day that is figured into the budget.

Councilor Malakie motioned to amend the amount to \$130,810 which passed unanimously.

Councilor Malakie motioned to approve as amended which passed unanimously.

Referred to Public Facilities and Finance Committees**#369-22 Appropriate \$49.3 million for the renovation/addition for 150 Jackson Road**

HER HONOR THE MAYOR requesting authorization to appropriate and expend forty-nine million three hundred thousand dollars (\$49,300,000) and authorize a general obligation borrowing of an equal amount for the renovation/addition to the 150 Jackson Road, the new home of the Lincoln Eliot Elementary School and authorization to apply any premium received upon the sale of the bonds or notes, less the cost of preparing, issuing, and marketing them, and any accrued interest received upon the delivery of the bonds or notes to the costs of the project and to reduce the amount authorized to be borrowed for the project by like amount.

Public Facilities Approved 5-0 (Councilor Kelley not voting)

Action: **Finance Approved 6-0**

Note: Josh Morse, Commissioner of Public Buildings presented the request to appropriate \$49.3 million for the renovation/ addition for the Lincoln-Eliot Elementary School at 150 Jackson Road. Commissioner Morse explained the cost breakdown which is attached to this report. This project has been simplified over the past year but construction costs have changed in the last year as well. With these changes, bidders do need to protect themselves and sometimes bid higher due to these costs. The cost for this project has increased from \$43 million due to these factors.

Commissioner Morse explained that they have had a number of community meetings with the neighborhood, school staff, and the Design Review Committee. In these meetings, they have received nothing but support from all of these groups on the project.

A Councilor raised concerns regarding the amount of money that is currently being spent by the City for a number of different projects. When this project was first brought to the Council years ago, it was presented as a \$15 million project but changes had to be made.

It was also noted that this is an important project for the Lincoln-Eliot Elementary School and the community.

Councilor Noel motioned to approve which passed unanimously.

#363-22 Submittal of the ACFR, and external audit reports

COMPTROLLER transmitting the Annual Comprehensive Financial Report and external audit reports for fiscal year ending June 30, 2021 for City Council review/acceptance.

Action: **Finance Approved 6-0**

Note: Matt Hunt, the City's independent auditor from Clifton Larson and Allen joined the Committee to discuss the Annual Comprehensive Financial Report, the Single Audit Reports and the Management Letter. These documents can be found at the following link:

<https://www.newtonma.gov/government/city-clerk/city-council/friday-packet>

Mr. Hunt explained that these documents have been reviewed by the City's Financial Audit Advisory Committee. He explained the auditor's opinion on the financial statements was an unmodified opinion which is the best opinion available in an audit.

Financial Statements

The financial statements are broken down into different components. The first set of financial statements includes capital assets, long-term debt, pension and OPEB liabilities. The net position of the liabilities is at \$650 million, which has been the case for a number of the years. This is due to the pension and OPEB liabilities. The second set of financial statements is where the general fund is reported. The overall general fund balance was approximately \$84.1 million which did increase by \$11 million. The unassigned fund balance is at approximately \$61 million. On page 12 of the report it shows the trend of these balances from the last few years and it shows that this is approximately 12% of the City's revenues. Mr. Hunt also noted that the enterprise funds have a positive net gain overall.

In 2021 there was a \$45 million increase in the Pension trust fund and a \$23 million increase to the OPEB trust fund. During FY21 there was also approximately \$5 million of new debt issued. For the liabilities, OPEB is at \$900 million which is a \$30 million increase from last year. This will continue to occur until the City can pay more into this each year. The pension liability went down from \$367 million to \$290 million.

Management Letter

Mr. Hunt explained that there are a number of comments that are rolled over from the previous year and these comments do take time to implement.

There are comments about the IT department. The IT department does do a good job in reviewing and implementing their comments. This is an area that the auditors do review each year.

One of the special projects last year was looking at some Covid-19 grants and that commentary is shown in the Management Letter. These are comments that could be used as a training tool for the City's grant managers.

Single Audit Report

Mr. Hunt explained that the single audit is used to test compliance on federal grants. This year the auditor reviewed 5 different grants. The overall audit opinion is also unmodified. There were findings related to the child nutrition cluster programs and every year the City needs to check that vendors have not been removed by the federal government. That documentation was not provided to the auditors. With the CDBG grants, there are also documents that were not filed as well. This is something the City should look at further next year.

Councilors asked the following question:

Q: How are the special projects chosen in the Management Letter?

A: It was noted that the special projects are chosen by the Financial Audit Advisory Committee through the audit process. All councilors are invited to these meetings and can make suggestions.

Councilor Oliver motioned to approve and accept the Annual Comprehensive Financial Report, the Single Audit Reports and the Management Letter which passed unanimously.

Referred to Public Safety & Transportation and Finance Committees

#293-22

Review and potential amendment to the Tiger Permit Program

COUNCILORS BOWMAN, ALBRIGHT, DOWNS, NORTON, OLIVER, AND DANBERG seeking a review and potential amendment to the Tiger Parking Permit Program (Sec. TPR-204. Newton North High School Tiger Parking Permits) including a review of the number of permits issued, the lottery process for permits and locations included in the Tiger Parking Permit Program and potential amendment to the fees associated with the Tiger Parking Permit Program.

Finance Held 6-0 on 06/06/22

Public Safety & Transportation Held 7-0 on 06/06/22

Public Safety & Transportation voted No Action Necessary (Councilor Oliver not voting) on 06/22/22

Action: Finance Approved the fee amount of \$60 6-0

Note: David Koses, Transportation Coordinator and Sergeant Michael Wade joined the committee to discuss the review and potential amendment to the Tiger Permit Program. There was a discussion in the Public Safety & Transportation Committee, and their work is shown in the attached PowerPoint slide. The role of the Finance Committee is to recommend a fee for the permit to the full City Council.

Mr. Koses explained that the fee change will go along with an item that is before the Traffic Council where they will discuss increasing the number of permits. He explained that the program is working well now but the fee is low compared to the bus fees and the fee for a parking permit at Newton South. The City is trying to solve for two issues: (1) ensuring that the spaces are being used in an appropriate way by those who are purchasing permits, and, (2) the City is trying to encourage other means of transportation. The goal is that raising the fee would address both of these objectives.

Public Safety & Transportation did take a straw vote to recommend that Traffic Council add 30 Tiger Permits, 25 of which will be assigned by the high school administration and 5 will be assigned on an as-needed basis. There was also a straw vote to recommend \$50 a year for the fee.

Councilors asked the following question:

Q: Does Mr. Koses have a preference between 180 and 165 permits?

A: Mr. Koses explained that he believes that 170 permits would be an optimal amount.

Councilors made the following comments:

A Councilor raised concerns regarding the number of permits that are being added to the program.

It was noted that the additional 30 permits will help to fulfill the needs of the growing population at Newton North.

The Finance Committee discussed setting the fee at \$60 dollars for the permit.

The Committee took a straw vote to recommend 170 permits to the Traffic Council which passed unanimously.

Councilor Noel motioned to approve the fee of \$60 which passed unanimously.

Referred to Programs & Services and Finance Committee

#263-22(2) Request for Discussion and Amendments to the Noise Ordinance

COUNCILORS BAKER, HUMPHREY, NORTON, RYAN, AND WRIGHT recommending discussion of possible amendments to strengthen the ordinances relating to leaf blower activity, including adjustment of fines to \$300 after a warning, [and consolidation of leaf blower violation fines in one section].

Programs & Services Approved 7-0 item #263-22(2) and voted to recommit to the City Council, to be jointly referred to the Finance Committee on 06/08/22

Action: Finance Approved 6-0

Note: John Lojek, Commissioner of Inspectional Services joined the Committee along with Councilor Baker to discuss the amendments to the Noise Ordinance. Councilor Baker provided the attached memo.

The Inspectional Services Department recommended the noise ordinance in terms of leaf blowers should be amended to a straight \$300 fine after a warning. Commissioner Lojek explained that this will help with the administrative process.

Councilor Oliver motioned to approve which passed unanimously.

#367-22 Mayor's reappointment of Edward Gourdeau, Jr. as a Constable

HER HONOR THE MAYOR reappointing EDWARD GOURDEAU, JR., 94 Clearwater Road, Newton Lower Falls as a Constable for the City of Newton for a term of office to expire April 30, 2025. (60 days: 08/20/22)

Action: Finance Approved 6-0

Note: With no questions or concerns from the Committee, Councilor Gentile motioned to approved which passed unanimously.

#368-22 **Appointment of Councilor Humphrey to the Emerson Community Center Trust**
PRESIDENT ALBRIGHT appointing Councilor Bill Humphrey, 712 Chestnut Street, Newton as a Trustee of the EMERSON COMMUNITY CENTER TRUST for a term of office to expire December 31, 2023.

Action: **Finance Approved 5-0-1 (Councilor Humphrey recused)**

Note: Councilor Humphrey joined the Committee to discuss his appointment to the Emerson Community Center Trust. He explained that the Comptroller was able to track down the exact amount of this fund and through this research the Commissioner of Public Buildings will be able to install city Wi-Fi at the Emerson Community Center. There will now be 3 trustees for this trust.

Councilor Gentile motioned to approve which passed 5-0-1 with Councilor Humphrey recused

Respectfully Submitted,

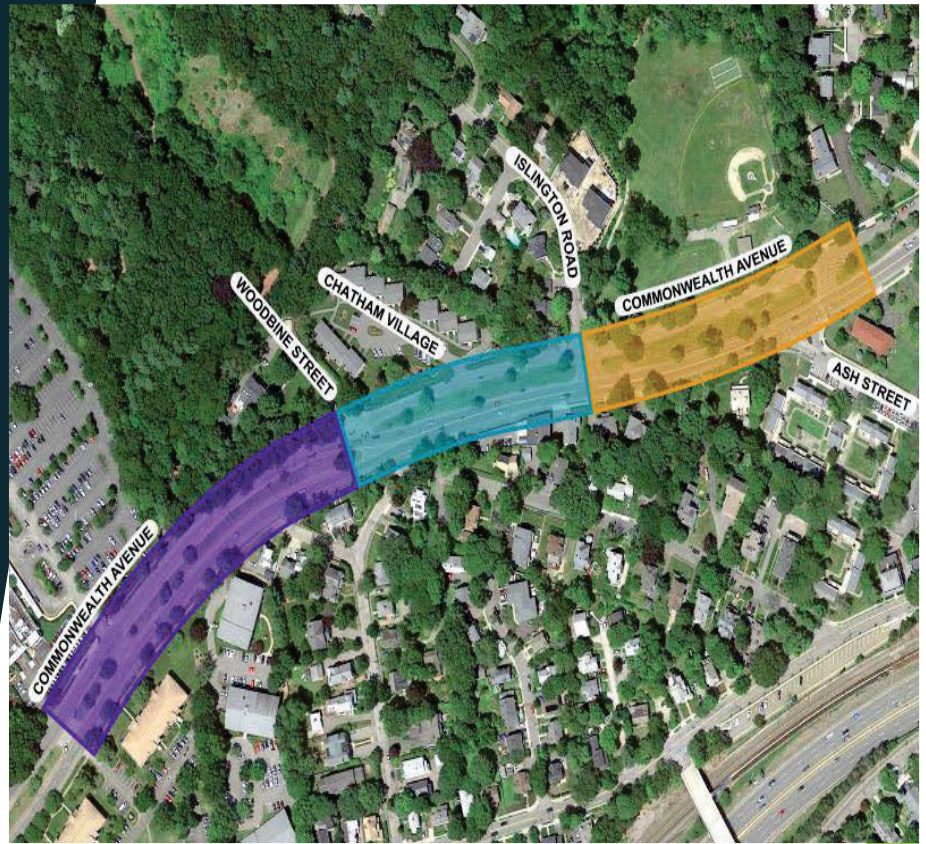
Rebecca Walker Grossman, Chair

Commonwealth Avenue Carriageway Redesign CPA Funding Recommendation

Community Preservation Committee
Presentation to Public Facilities Committee
June 22, 2022

Project Overview

- ▶ Initial CPA funding approved in Nov. 2020 for the 100% design to reconstruct the Carriageway from Lyons Field to the Marriott Hotel
- ▶ Project will link existing trail systems, create new pedestrian and bicycle lanes, add greenspace, and enhance existing roadway crossings and signals
- ▶ Design has been coordinated with MassDOT to take advantage of \$5.9 million in construction funding in FY23



Current Funding Request

Additional CPA funding is requested to cover the expense of unanticipated consultant work needed to create additional options and hold extra public meeting for the redesign of the Ash Street intersection.

The additional funding will allow the project to be completed on schedule for MassDOT to begin construction in Spring 2023.

Recommended CPA Project Funding

CPA Funding Accounts	Amount
Unrestricted Prior Year Funds	\$133,002
TOTAL CPA PROJECT FUNDS:	\$133,002

CPA Funding is recommended to be Recreation category funding.

Total CPA funding would be 8.6% of the overall project funding.

Proposed Budget

Funding Sources and Uses	Funding Amount
2022 CPA Recommended Funding	\$133,002
City of Newton and Solomon Funds	\$247,900
2020 CPA Recreation Funding	\$390,000
MassDOT Bicycle and Pedestrian Program (FY23 Construction)	\$5,900,000
Total Project Costs	\$6,670,902

Timeline

- ▶ Conceptual Design - Complete
- ▶ 25% Design - Complete
- ▶ 100% Final Design - In Progress and on time for FY23 Completion
- ▶ Construction - Spring 2023

Questions & Discussion

► Thank you!

AGREEMENT FOR ENGINEERING SERVICES
BY AND BETWEEN THE
CITY OF NEWTON, MASSACHUSETTS
AND
HOWARD/STEIN-HUDSON ASSOCIATES, INC.
FOR
ENGINEERING SERVICES RELATING TO TRANSPORTATION PLANNING AND
TRAFFIC ENGINEERING CONSULTING SERVICES ALONG COMMONWEALTH
AVENUE/ROUTE 30 IN NEWTON, MASSACHUSETTS – PHASE II

THIS AGREEMENT is made by and between the City of Newton acting herein by and through its Commissioner of Public Works or his designee, but without personal liability to him, with an address of 1000 Commonwealth Avenue, Newton, Massachusetts 02459 hereinafter called the OWNER, and Howard/Stein-Hudson Associates, Inc., a Massachusetts corporation with a principal office address of 11 Beacon Street, Suite 1010, Boston, Massachusetts 02108, hereinafter called the ENGINEER,

WITNESSETH, for the consideration hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1 - ENGAGEMENT OF THE ENGINEER

- 1.1 The OWNER hereby engages the ENGINEER, and the ENGINEER hereby accepts the engagement, to perform certain Professional Engineering services relating to Transportation Planning and Traffic Engineering Consulting Services along Commonwealth Avenue/Route 30 in Newton, Massachusetts – Phase II, hereinafter called the PROJECT.
- 1.2 This Agreement covers all Services defined in Article 2 as agreed on, in writing, by both the OWNER and the ENGINEER for scope and fee.

ARTICLE 2 – SCOPE OF SERVICES

- 2.1 The ENGINEER’S Scope of Services under this AGREEMENT are described in a proposal submitted by the ENGINEER dated December 14, 2020 attached hereto and incorporated herein as Attachment A.

ARTICLE 3 - RESPONSIBILITIES OF THE OWNER

The OWNER, without cost to the ENGINEER, shall do the following in a timely manner so as not to delay the services of the ENGINEER:

- 3.1 Designate a person to act as the OWNER'S representative with respect to work to be performed under this AGREEMENT, such person shall have complete authority to transmit instructions, receive information, interpret and define the OWNER’S policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this AGREEMENT.

- 3.2 Confer with the ENGINEER regarding both general and special considerations relating to the PROJECT.
- 3.3 Assist the ENGINEER by placing at the disposal of the ENGINEER, all available information pertinent to the PROJECT, including previous reports and any other data relative to design or construction of the PROJECT.
- 3.4 Pay all application and permit fees associated with approvals and permits from all governmental authorities having jurisdiction over the PROJECT, and such approvals and consents from others as may be necessary for completion of the PROJECT.
- 3.5 Arrange for access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform its work under this AGREEMENT.
- 3.6 Furnish the ENGINEER all needed property, boundary and right-of-way maps.
- 3.7 Cooperate with and assist the ENGINEER in all additional work that is mutually agreed upon.
- 3.8 Pay the ENGINEER for work performed in accordance with the terms specified herein.
- 3.9 Prepare all legal documents, access agreements, easements, and takings as they relate to the construction on private property.

ARTICLE 4 - TIME OF PROJECT

- 4.1 The ENGINEER shall initiate work under this AGREEMENT within ten (10) calendar days following the OWNER'S execution of this AGREEMENT. The PROJECT shall conclude on or before March 1, 2023.

ARTICLE 5 - PAYMENTS TO THE ENGINEER

- 5.1 For services performed under this AGREEMENT, the OWNER agrees to pay the ENGINEER an amount not to exceed \$390,000. Fees for this PROJECT shall be billed monthly as they accrue based upon the services performed.
- 5.2 The OWNER shall make payments to the ENGINEER on a monthly basis, thirty (30) calendar days after receipt of an invoice for work performed or materials supplied the previous month.
- 5.3 If the OWNER fails to make any payment due the ENGINEER for services and expenses within thirty (30) days after receipt of the ENGINEER'S statement therefore, the

ENGINEER may, after giving seven (7) days written notice to OWNER, suspend services under this AGREEMENT. Unless payment is received by the ENGINEER within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the ENGINEER shall have no liability to the OWNER for delay or damage caused the OWNER because of such suspension of services.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

6.1 Comprehensive Liability Insurance

The ENGINEER shall secure and maintain, for the duration of this AGREEMENT, including any supplements thereto, the following Comprehensive Liability Insurance policy or policies at no cost to the OWNER.

With respect to the operations the ENGINEER performs, the ENGINEER shall carry:

6.1.1 Comprehensive General Liability Insurance providing for a combined single limit of One Million Dollars (\$1,000,000) for bodily injury, death, and property damage and which includes the City of Newton as Additional Insured.

6.1.2 The ENGINEER shall provide the OWNER with Certificates of Insurance evidencing that the City of Newton is named as an Additional Insured, which Certificates must contain the Additional Insured General Liability Insurance Endorsement Form Number.

6.2 Automobile Liability Insurance

The ENGINEER shall secure and maintain, for the duration of this AGREEMENT, including any supplements thereto, Automobile Liability Insurance covering the operation of all motor vehicles, including those hired or borrowed, used by the ENGINEER in connection with this AGREEMENT, in the following amount:

6.2.1 Not less than One Million Dollars (\$1,000,000) combined single limit for all damages arising out of bodily injuries to or death of persons and all damages arising out of injury to or destruction of property in any one accident or occurrence.

6.2.2 Not less than One Hundred Thousand Dollars (\$100,000) for all damages arising out of injury to or destruction of property in any one accident or occurrence.

6.3 Umbrella Liability Insurance

In addition to the above-mentioned coverage, the ENGINEER shall carry a minimum of One Million Dollars (\$1,000,000) umbrella liability policy for the duration of the PROJECT.

6.4 Professional Services Liability Insurance

The ENGINEER shall secure, at his own expense, a Professional Services Liability insurance policy for errors and omissions in the amount of One Million Dollars (\$1,000,000) and maintain same for the duration of this PROJECT. The ENGINEER hereby agrees to indemnify and save harmless the OWNER, its officers, agents and employees, from and against any and all claims arising out of the negligent acts, errors or omissions of the ENGINEER.

6.5 Hazardous Waste Indemnifications

6.5.1 The ENGINEER and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous waste in any form at the PROJECT site. Accordingly, the OWNER hereby agrees to bring no claim for negligence, breach of contract, strict liability, indemnity, contribution or otherwise against the ENGINEER, its principals, employees, agents or consultants if such claim in any way arises from such services.

6.5.2 The OWNER hereby warrants that, if he or she knows or has any reason to assume or suspect that hazardous materials may exist at the PROJECT site, he or she has so informed the ENGINEER. The OWNER also warrants that he or she has done his or her best to inform the ENGINEER of such known or suspected hazardous materials' type, quantity and location.

6.5.3 If, in the performance of the work under this AGREEMENT, hazardous materials are encountered and are judged by the ENGINEER to be an imminent threat to on-site personnel and/or the general public, the ENGINEER shall take all steps immediately available which are, in his judgment, prudent and necessary to mitigate the existing threat. The OWNER agrees to compensate the ENGINEER for any time spent or expenses incurred by the ENGINEER to mitigate the threat, in accordance with the ENGINEER'S prevailing fee schedule and expense reimbursement policy.

6.6 Worker's Compensation Insurance

The ENGINEER shall secure and maintain, for the duration of this AGREEMENT, Worker's Compensation Insurance policy in amounts required by law at no cost to the OWNER.

6.7 Indemnification

The ENGINEER shall indemnify, defend and hold harmless the OWNER, its officers, employees, servants and agents from and against all claims, damage, losses and expenses including attorney's fees, arising out of the negligent acts, errors or omissions of the ENGINEER, any of ENGINEER'S subcontractors or subconsultants, anyone directly or indirectly employed by any of them or anyone for whose acts the ENGINEER may be liable.

ARTICLE 7 - LITIGATION AND EXTENSION OF SERVICES

7.1 Litigation and Additional Work

In the event the ENGINEER is to prepare for or appear in any litigation on behalf of the OWNER, or is to make investigations or reports on matters not covered by this AGREEMENT, or is to perform other services not included herein, additional compensation shall be paid the ENGINEER as is mutually agreed.

7.2 Changes in Work

The OWNER, from time to time, may require changes or extensions in the Scope of Services to be performed hereunder. Such changes or extensions, including any increase or decrease in the amount of compensation, to be mutually agreed upon by and between the OWNER and the ENGINEER, shall be incorporated into written amendments to this AGREEMENT.

ARTICLE 8 - OWNERSHIP AND USE OF DOCUMENTS

8.1 All documents, reports, drawings, designs, specifications, notes and other work developed and furnished by ENGINEER to the OWNER in the performance of this AGREEMENT (hereinafter called "DOCUMENTS") shall be the property of the OWNER. However, this ownership shall not include any ownership interest in ENGINEER'S preexisting information including, but not limited to, computer programs, software, models, standard details or specifications or ENGINEER'S or the licensed professional's seal, stamp, or certification. Additionally, if ENGINEER provides any documents, reports, or materials including, without limitation, plans drawings and specifications on electronic media, then in all circumstances the hard copy of any such document, report, and material including, without limitation, plans, drawings, and specifications shall control in the event of any conflict or discrepancies between the hard copy and the electronic media copy.

8.2 The OWNER shall have the right to use the DOCUMENTS to complete the services for which they were prepared by the ENGINEER or to use the DOCUMENTS on any other PROJECT without additional cost to the OWNER; and with respect thereto for purposes to complete the services for which the DOCUMENTS were prepared or for use on any other project, the ENGINEER agrees and hereby grants to the OWNER an irrevocable royalty-free license to all such data which may be covered by the ENGINEER'S copyright and to all designs as to which the ENGINEER may assert any rights or establish any claims under any patent or copyright laws. The ENGINEER shall not be responsible for changes made in the DOCUMENTS without the ENGINEER'S authorization, nor the OWNER'S use of the DOCUMENTS if such use does not involve the services of the ENGINEER pursuant to this AGREEMENT or if such use is on another project.

- 8.3 All DOCUMENTS prepared under this AGREEMENT are confidential and the ENGINEER agrees that they shall not be made available to any individual or organization without the approval of the OWNER.

ARTICLE 9 - TERMINATION

- 9.1 Either the OWNER or the ENGINEER may terminate this AGREEMENT, upon thirty (30) days' written notice, in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- 9.2 If the PROJECT is suspended or abandoned in whole or in part for more than three (3) consecutive months, the ENGINEER shall be compensated for all services performed prior to receipt of written notice from the OWNER of such suspension or abandonment, together with other direct cost then due. If the PROJECT is resumed after being suspended for more than three (3) consecutive months, the ENGINEER'S compensation shall be equitably adjusted.
- 9.3 By written notice to the ENGINEER, the OWNER may terminate this AGREEMENT in whole or in part at any time either for the OWNER'S convenience or because of the failure of the ENGINEER to fulfill its obligations under this AGREEMENT. If any such termination shall occur without the fault of the ENGINEER, all compensation and reimbursement due to the ENGINEER up to the date of termination, in accordance with the terms of this AGREEMENT, including proportionate payment for partially completed work, shall be paid to the ENGINEER by the OWNER. Such payment shall not exceed the fair value of the work, as the OWNER shall determine. No amount shall be allowed for anticipated profit or unperformed services.
- 9.4 If this AGREEMENT is terminated due to the failure of the ENGINEER to fulfill its obligations hereunder, the OWNER may take over the work and prosecute the same to completion by contract or otherwise. In such case, the ENGINEER shall be liable to the OWNER for any additional cost occasioned by the OWNER thereby. These right and remedies of the OWNER are in addition to any rights and remedies provided by law or under this AGREEMENT.
- 9.5 Neither party shall be responsible or liable to the other party for any special, consequential, incidental, indirect or punitive damages. The total aggregate liability of the ENGINEER under this AGREEMENT shall not exceed the amount available under the ENGINEER'S applicable insurance policy for such liability under the limits set forth in Article 6 herein or one million dollars (\$1,000,000), whichever is greater.

ARTICLE 10 - GENERAL PROVISIONS

- 10.1 Precedence

The Terms and Conditions set forth in this Agreement shall take precedence over any inconsistent, additional or contradictory provisions contained in any attachment to this AGREEMENT, proposal, contract, purchase order, requisition, notice to proceed, or like document regarding the ENGINEER'S services, including the ENGINEER's proposal dated December 14, 2020.

10.2 Severability

If any of said Terms and Conditions of this AGREEMENT shall be finally determined to be invalid or unenforceable in whole or part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this AGREEMENT to replace any such invalid or unenforceable provision with a valid enforceable provision that comes as close as possible to the intention of the stricken provision.

10.3 Governing Law

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

10.4 Assignability

The ENGINEER shall have the full and direct responsibility for the performance of the work required under this AGREEMENT which shall be binding upon its heirs, successors and assigns. The ENGINEER shall not sell, assign or transfer this AGREEMENT or any part thereof without the prior written consent of the OWNER.

10.5 Personnel/Subcontracting

10.5.1 The ENGINEER represents that it has secured at its own expense, all personnel required for the performance of the services under this AGREEMENT.

10.5.2 None of the work or services covered by the AGREEMENT, except services relating to document reproduction and other minor out-of-pocket expenses, shall be subcontracted without the prior written approval of the OWNER.

10.6 Release and Discharge

The acceptance by the ENGINEER of the last payment for services paid under the provisions of this AGREEMENT and/or in the event of termination of this AGREEMENT, shall in each instance operate as and be a release to the OWNER and every member and agent thereof, from all claims and liability to the ENGINEER for everything done or furnished for or relating to the work, or for any act or neglect of the OWNER or any person relating to or affecting the work and except that such acceptance shall not release the OWNER from any liability it would otherwise have for injuries to third parties resulting from the negligent acts or omissions of the OWNER or its employees.

10.7 Notices, Approvals, Invoices

Any notice required under this AGREEMENT to be given by the OWNER to the ENGINEER, or by the ENGINEER to the OWNER, shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the OWNER to the ENGINEER at Environmental Partners Group, Inc., 1900 Crown Colony Drive, Suite 402, Quincy, MA 02169, or the ENGINEER to the OWNER at City of Newton Department of Public Works, 1000 Commonwealth Avenue, Newton, Massachusetts 02459.

10.8 Conflict of Interest

By execution of this AGREEMENT with the OWNER, the ENGINEER acknowledges that the OWNER is a municipality for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts Conflict of Interest Statute) and agrees as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the ENGINEER based on said statute.

10.9 Non Discrimination

The ENGINEER agrees and warrants that in the performance of this AGREEMENT, it will not discriminate against any person or group of persons on the grounds of religious creed, ancestry, national origin, sex, disability, sexual orientation, age, race, color, gender identity and expression, veteran's and active military status, genetic information or any other category protected by federal, state or local law.

10.10 Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same agreement. This Agreement may be electronically signed and transmitted, which electronic signature shall be binding on the signing party.

[END OF PAGE – SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT, which shall take effect as a sealed instrument.

ACCEPTED FOR:

CITY OF NEWTON, MASSACHUSETTS

HOWARD/STEIN-HUDSON ASSOCIATES, INC.

By: Barney Heath
Barney Heath
Its Director of Planning and Development

By: Thomas A. Stokes
Name: Thomas A. Stokes, P.E.
Title: President and CEO

Date: 3/18/21

Date: February 26, 2021

I certify that funds are available within Account No. 58D11408-530100
In the amount of \$ 390,000 for this AGREEMENT.

Comptroller of Accounts

Date: 3/19/21

APPROVED AS TO LEGAL FORM AND CHARACTER:

By: _____
Assistant City Solicitor

Date: _____

CONTRACT APPROVED

Ruthanne Fuller, Mayor

Date: _____

CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk/Secretary of:
Howard Stein Hudson corporation; and that
(insert name of corporation)

2. Thomas A. Stokes, P.E. is the duly elected
(insert name of officer who signed contract)
President and CEO of said corporation; and that
(insert title of officer)

3. on August 3, 2020 at a duly authorized meeting of the Board of
(insert date of meeting)*
Directors of said corporation, at which all the Directors were present or waived notice, it was
voted that

Thomas A. Stokes, President and CEO of this corporation
(insert name and title of officer) (NOTE: Should be same as No. 2 above)

be and hereby is authorized to execute contracts and bonds in the name and on behalf of said
corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation
in this corporation's name on its behalf, with or without the Corporate Seal, shall be valid and
binding upon this corporation; and that

4. the above vote has not been amended or rescinded and remains in full force and effect as
of the date set forth below.

ATTEST: Keri Pyke
(Signature of Clerk or Secretary)

Name: Keri Pyke, P.E., PTOE
(Please print or type name of Clerk/Secretary)

DATE: February 26, 2021
(insert date Certificate signed by Clerk or Secretary)**



*This date must be *on or before* the date that the corporate officer signs the contract.

**This date must be *on or after* the date that the corporate officer signs the contract.

CERTIFICATE OF TAX COMPLIANCE

Pursuant to G.L. c. 62C, § 49A, the undersigned, certifies under the penalties of perjury that, to the best of the knowledge and belief of the undersigned, the Contractor is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.*



**Signature of Individual
or Corporate Contractor (Mandatory)

04-2975120

*** Contractor's Social Security Number
(Voluntary) or Federal Identification
Number

By: President and CEO
Corporate Officer
(Mandatory, if applicable)

Date: February 26, 2021

* The provision in the Attestation relating to child support applies only when the Contractor is an individual.

** Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

*** Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of GL c. 62C, § 49A.



ATTACHMENT A

December 14, 2020

Ms. Nicole Freedman
Director of Transportation Planning
City of Newton
1000 Commonwealth Avenue
Newton, MA

Re: Newton – Carriage Road Corridor Improvements – Phase II

Dear Ms. Freedman:

We are delighted that you would like to engage *Howard Stein Hudson (HSH)* to complete this proposal for the reconstruction of Carriage Road per the conceptual design for separated bicycle and pedestrian facilities along a section of Commonwealth Avenue/Route 30 within the City of Newton, Massachusetts. The following scope of work includes services needed to further develop concepts and advance the design through construction in accordance with Massachusetts Department of Transportation (MassDOT) standards, policies, and procedures.

Due to a grant awarded to the City, this proposal is broken into two parts. Phase I is complete and included all the work required to bring the design to a 25% submission. Phase II includes all the work following that submission, including design submissions through plans, specifications, and estimate (PS&E), as well as construction engineering. An outline of the scope of services for Phase II is included on the subsequent pages.

Also included in this amendment request are additional services required due to out-of-scope work identified during phase I. This work includes the level of effort required to;

- Complete a design justification workbook;
- Revise the project limits due to coordination with the adjacent MassDOT project 110890, Newton – Weston – Bridge Rehabilitation N-12-010=W-29-005, South Avenue (South Avenue (Route 30) over the Charles River;
- Modify cross sections during the preliminary design stage; and
- Initiate a project schedule for MassDOT.



Scope of Services

Phase I. Out of Scope Work

106 – PROJECT DESIGN SCHEDULE DEVELOPMENT

HSH will prepare a design schedule per MassDOT guidelines.

309 – PRELIMINARY HORIZONTAL GEOMETRY

HSH will evaluate the horizontal geometry at the western project limit.

312 – PREPARE CROSS SECTIONS

HSH will evaluate and modify the cross section at the western project limit.

223 – PREPARE DESIGN JUSTIFICATION WORKBOOK

HSH will prepare a Design Justification Workbook including a narrative, traffic analysis, typical sections, photographs, and summary of controlling criteria. The report will be prepared according to MassDOT guidelines.

224 – REVISIONS PER MASSDOT D6 REVIEW

HSH will address comments provided by MassDOT to receive final approval for the Design Justification Workbook.

Phase II. Final Design

350 – DESIGN PUBLIC HEARING

352 – HEARING PREPARATION

Following the 25% design submission, HSH will prepare the graphics and other visual aids per the negotiated scope of services to display at the public hearing and will prepare a public hearing handout.

353 – DESIGN PUBLIC HEARING

HSH will attend Design Public Hearing, present the project to the public, and respond to questions. HSH will assist MassDOT in preparing written responses to letters received from concerned individuals because of the hearing.



400 – 75% HIGHWAY DESIGN SUBMISSION

401 – RESPONSE TO 25% COMMENTS

HSH will prepare a formal written response to all comments received regarding the 25% review and address revisions stemming from the Design Public Hearing that MassDOT and HSH deem necessary.

402 – FIELD RECONNAISSANCE

HSH will conduct a field review of the proposed project interface with adjacent properties, streets, drives, drainage, utilities, wetlands, etc. HSH will define additional survey needs, if necessary.

403 – MEETINGS LIAISON AND COORDINATION

HSH will attend up to two meetings and provide the liaison necessary to advance the design of a project. HSH will coordinate and attend meetings with MassDOT's Boston and District Offices, community representatives, planning agencies, as determined in the project scoping process. HSH will provide the City with agendas and minutes of the meetings. This task also includes preparation and attendance at a 75%/100% Public Information Meeting to present the project to the public and answer questions.

404 – UTILITY COORDINATION

HSH will contact utility companies affected by the proposed work, discuss project impacts, and note the locations of relocated utilities (poles, pipes, etc.) on the plans. HSH will include estimate and special provisions for publicly owned utility work that is to be performed by the construction contractor.

405 – FINAL HORIZONTAL DESIGN GEOMETRICS

HSH will adjust the horizontal geometry based on the 25% review comments and comments stemming from the Design Public Hearing. Plans will clearly show all aspects of the horizontal geometry, including curve components such as Point of Curvature (PC), Radius (R), DELTA, Length of Curve (L), Tangent (T), and Point of Tangency (PT) along with a description of roadway widths, station equations, and horizontal offsets between survey baseline and design centerline.

406 – FINAL VERTICAL DESIGN GEOMETRICS

HSH will adjust vertical geometry based on 25% review comments and comments stemming from the Design Public Hearing. Plans will clearly show all pertinent aspects of the vertical geometry including Stopping Sight Distance (SSD), Passing Sight Distance (PSD), Grade 1 (G1), Grade 2 (G2), Length of Vertical Curve (L), K (factor), station and elevation of Point of Vertical Curvature (PVC), Point of Vertical Tangency (PVT), and Point of Vertical Intersection (PVI). Profiles are to be prepared in accordance with the Guidebook.



407 – PAVEMENT DESIGN

HSH will respond to Pavement Design Engineer's review comments and prepare a detailed pavement design with updated data sheets, per the Guidebook.

408 – TYPICAL CROSS SECTIONS

HSH will finalize the typical cross sections ensuring that materials and dimensions are clearly labeled in accordance with the proposed pavement structure approved by the Pavement Management Section.

409 – PLOT CROSS SECTIONS

HSH will adjust cross sections to ensure that the slope limits and treatments of each cross section are crafted to suit the specific site locations. Individual cross sections will be evaluated regarding guardrail locations, gravel box detail, pay limits, and the need for subdrains and retaining walls.

410 – PLOT PROPOSED LAYOUT AND EASEMENTS

HSH will adjust the plans based on the limits established by the final cross sections to ensure that adequate right of way is available to perform the work. Existing layout lines, proposed alterations, and any temporary or permanent easements will be clearly labeled.

411 – CONSTRUCTION PLANS

HSH will prepare the Construction Plans in accordance with the Guidebook. Each item of work within the project limits will be clearly labeled and drawings will be formatted as described in the Guidebook.

412 – GRADING AND TIE PLANS

HSH will prepare grading and tie plans as applicable showing detailed information regarding proposed curve geometry and grades.

413 – DRAINAGE AND WATER SUPPLY DETAILS

HSH will clearly show all existing and proposed drainage and water supply installations. The drainage and water supply design will address all work required to accommodate the proposed roadway improvements.

During the Project's design development, the plan presentation of proposed drainage facilities will show rim and invert elevations. These will be included in a separate CADD layer, so that they can be frozen off in the PS&E documents. These elevations will not be shown on the final plans.

414 – TRAFFIC SIGNS

HSH will identify locations for all warning, regulatory and route marker signs and will indicate on the construction plans the status of existing sign structures.



416 – TRAFFIC SIGNALS AND PLAN PREPARATION

HSH will include designs for traffic signal installations, supports, and foundations, develop traffic signal specifications, where needed, finalize phasing details, and prepare the traffic signal plans for the intersection of Commonwealth Avenue/Carriage Road/Ash Street.

417 – PAVEMENT MARKINGS AND PLAN PREPARATION

HSH will design and layout the roadway pavement markings, stop lines, cross walks, gore markings, etc., and prepare pavement marking plans.

418 – TRAFFIC MANAGEMENT

Finalize the construction staging. Prepare the temporary traffic control construction plans in accordance with the *Manual on Uniform Traffic Control Devices* (MUTCD) such that enough information is provided to demonstrate a feasible means of constructing the project. The level of detail shall recognize that the actual traffic management plan implemented by the contractor may vary from that shown on the plans. A more definitive estimate for the use of police/flaggers will be made based on the finalization of the traffic control plans/traffic management plans.

420 – LANDSCAPE PLAN AND PLAN PREPERATION

HSH will develop preliminary landscaping plans highlighting the areas for aesthetic improvement.

423 – QUANTITY AND COST ESTIMATE (WEIGHTED AVERAGE BID APPLICATION)

HSH will prepare a detailed estimate using MassDOT's Weighted Average Bid Application (WABA) and a calculation book based on the latest edition of the Standard Nomenclature. HSH will make certain that every item of work shown on the plans has a pay item. HSH will provide tracking of significant changes (greater than 10%) since the 25% estimate.

424 – SPECIAL PROVISIONS

HSH will prepare draft special provisions based on the latest edition of the Standard Specifications for Highways and Bridges and Supplemental Specifications and verify that every item in the estimate that is listed in the Standard Nomenclature with an asterisk (*) has a special provision. HSH will ensure that special provisions are drafted only when absolutely necessary to describe a specific or unique activity to be performed by the contractor.

425 – CONSTRUCTABILITY AND QUALITY CONTROL (QC) REVIEWS

HSH will perform an independent review of the project using an experienced engineer, who is not directly involved in the preparation of the contract documents. The review will focus on the practicality of constructing the project based on access to site, equipment needs, material properties, etc. HSH will also provide an overall review of the plans, specifications and estimate for conformity to the Guidebook, the Standard Specifications for Highways and Bridges, the latest Supplemental



Specifications, the Bridge Manual, the Construction and Traffic Standard Details, and the latest Engineering and Policy Directives.

426 – SUBMISSION CHECK LIST

HSH will prepare and submit the 75% Design Check List.

428 – CONSTRUCTION CONTRACT TIME DETERMINATION

HSH shall prepare a Construction Contract Time Determination (CCTD) to estimate a reasonable duration of the construction contract. The CCTD will be based on the construction plans, temporary traffic control plans (TTCP), special provisions, Project Utility Coordination form (PUC) and estimate. A critical path method (CPM) schedule that segregates the project into a reasonable number activities will be included. This will allow MassDOT to fix the contract time for the project. The schedule will also allow MassDOT to communicate the project construction timeline to the public.

450 – 100% HIGHWAY DESIGN SUBMISSION

451 – RESPOND TO 75% COMMENTS

HSH will prepare a formal written response to all comments received regarding the 75% review and resolve any further review comments.

452 – FINALIZE PLANS

HSH will prepare a set of plans addressing all comments received from the 75% review and ensure that the plans are clear and are prepared in accordance with Chapter 2 of the Guidebook.

453 – FINALIZE SPECIAL PROVISIONS

HSH will review the special provisions to ensure that the special provisions do not duplicate those with respect to Division I of the Standard Specifications. HSH will also review the Method of Measurement and Basis of Payment for every item to ensure that the special provisions are clearly defined and not ambiguous.

454 – FINALIZE QUANTITY AND COST ESTIMATE (WABA AND CALCULATION BOOK)

HSH will prepare Detail Sheets, Quantity Sheets, and a Cost Summary Sheet and finalize the calculation book in accordance with Chapter 18 of the Guidebook. HSH will prepare calculations for all items of work that have a pay item and identify any non-participating work. The estimate submitted will be prepared using MassDOT's WABA. HSH will provide tracking of significant changes (greater than 10%) since the 75% estimate.



455 – QUALITY CONTROL (QC) REVIEW

HSH will perform an independent review of the project using an experienced engineer, who is not directly involved in the preparation of the contract documents to perform an independent review of the project. HSH will verify that the plans, specifications, and estimate are prepared in accordance with these documents.

456 – SUBMISSION CHECK LIST

HSH will prepare and submit the 100% Highway Design Check List.

458 – CONSTRUCTION CONTRACT TIME DETERMINATION

HSH will update the Construction Contract Time Determination based on any changes to the design from 75% to 100% submittal or from MassDOT review comments. CPM schedule and narrative will be revised per comments and design changes.

500 – RIGHT OF WAY

It is assumed that the proposed project will not require any takings or permanent easements; all work is expected to fit within the public right of way. Work performed under Tasks 501 and 504 will include the preparation of plans that show required temporary easements. Layout and Instrument are not included in this proposal and the City is responsible for right of way outside of this scope.

501 – PRELIMINARY RIGHT OF WAY PLANS

HSH will review the relationship between the limits of work necessary to satisfactorily construct the proposed improvements and the existing layout. HSH will determine appropriate limits of alterations to existing layouts, takings, permanent easements, temporary easements, etc. HSH will prepare Preliminary Right of Way Plans in accordance with Chapter 18 of the Guidebook. The Right of Way Plans will include Title Sheet, Typical Sections, Parcel Summary Sheet, Location Maps, and Property Plan Sheets.

504 – FINAL RIGHT OF WAY PLANS

After the Federal Highway Administration (FHWA) has granted authority to the State and approved Federal participating funds to acquire the right of way takings and/or the Right of Way Bureau accepts the Preliminary Right of Way Plan, the Preliminary Right of Way Plan will become the Final Right of Way.

600 – GEOTECHNICAL DESIGN

602 – FIELD RECONNAISSANCE

HSH will conduct a field review of the proposed boring and pavement core locations and make sure that they are clearly marked for the subcontractor.



604 – SUBSURFACE INVESTIGATION INSPECTION

HSH will be present in the field during subsurface exploration to make sure the subcontractor tests the correct locations and meets dimensional requirements.

800 – PS&E SUBMISSION

801 – RESPOND TO 100% COMMENTS

HSH will prepare a formal written response to all comments received regarding the 100% review.

802 – FINALIZE PLANS, SPECIFICATIONS AND ESTIMATE

HSH will ensure that all comments from 100% review are addressed and reflected in the contract documents.

803 – PREPARE DETAIL SHEETS

HSH will prepare Detail Sheets in accordance with Chapter 13 of the Guidebook. All items of work not adequately reflected on the plans will be described in the Detail Sheets.

805 – QUALITY CONTROL (QC) REVIEW

An experienced engineer who is not directly involved in the preparation of the contract documents will perform an independent review of the project. The independent engineer will also review all environmental permits and ensure that the contract documents provide a means of compensating the construction contractor for performing work described in the permits.

900 – CONSTRUCTION ENGINEERING

901 – PRE-BID SERVICES

HSH will assist with construction procurement phase by tabulating and reviewing the bid results on the behalf of the City. HSH will review the bids for irregularities, high- and low-priced items, and any other items of interest such as explicit Contractor assumptions or exclusions. HSH will summarize these results in a letter with a recommendation for award to the City.

902 – PRE-CONSTRUCTION CONFERENCE

HSH will attend a pre-construction meeting between the Owner, the Contractor, and any other necessary parties prior to the Contractor's mobilization to the site. HSH will be present to address any questions or concerns pertaining to the overall design and the construction phasing, and to provide input on the construction startup procedures.

903 – HIGHWAY SHOP DRAWINGS AND SIGNAL PERMIT

HSH will review all shop drawings submitted by the contractor and provide the appropriate response to each. HSH will also provide responses to any requests for information (RFI) submitted by the project team as they pertain to the design or construction activities.



906 – FURNISHING ADVICE AND FIELD VISITS

HSH will be present on-site periodically throughout the project. HSH will visit the site weekly, and on an as-needed basis, monitoring construction progress and key project milestones. HSH will address any questions or concerns the Contractor or the Resident Engineer may have while on-site, furnishing advice on actions to be taken as appropriate. HSH will prepare and furnish a field report following each visit to the site.

Schedule

The 25% design was completed on November 20, 2020. HSH will work with the City of Newton and MassDOT to develop a project schedule under Task 106 that meets the requirements based on funding schedules and adjacent projects.

Fee for Services

Fees will be billed on a time and materials basis and in accordance with the attached fee schedule. Our labor plus direct expenses estimate for these services is **\$389,960**.

Task	Budget
PHASE I: OUT OF SCOPE WORK	
Project Design Schedule Development	\$2,020
Preliminary Horizontal Geometry	\$2,940
Prepare Cross Sections	\$3,110
Design Justification Workbook	\$8,120
Out of Scope Subtotal	\$16,190
PHASE II: FINAL DESIGN	
Design Public Hearing	\$12,850
75% Highway Design Submission	\$107,525
100% Highway Design Submission	\$54,840
Right of Way	\$31,030
Geotechnical Design	\$2,520
PS&E Design Submission	\$26,965
Construction Engineering	\$33,665
Contingency	\$48,615
Phase II: Final Design Subtotal	\$318,010



DIRECT EXPENSES	
Direct Expense (Printing/Travel)	\$1,800
Direct Expense (Landscaping)	\$44,000
Direct Expense (Borings/Pavement Cores)	\$10,000
Direct Expenses Subtotal	\$55,800
PROJECT TOTAL	\$390,000

Materials or reimbursable (direct) expenses will be billed at cost plus ten percent. Materials or reimbursable expenses are actual expenditures made by HSH in the interest of the project and include but are not limited to printing, photocopying, delivery charges, postage, research materials, local transportation, and any other expenses incurred in the interest of the project. Reimbursable expenses do not include permit filing fees.

Meetings are budgeted as outlined above; additional meetings, if required, will be billed at the hourly rates shown in the attached rate schedule. Additional team and agency meetings generally cost between \$500 – \$750 per meeting, depending on the duration of each meeting and the staffing required. Additional community meetings range higher at up to \$1,250 per meeting depending on the need to provide supporting materials/graphics and the overall length of the meeting and any possible team preparation. All additional meetings will be invoiced on a time and materials basis based solely on hours expended as well as any travel costs.

While HSH feels the scope of work and associated fee provided in this proposal is appropriate for this type and size of development in this location and that it will be acceptable to reviewing agencies, should the scope of work change either by request of the Client, reviewing agencies, or the community, HSH will provide an additional services request for advance review and approval by the Client.

Terms

Payment of Services: The project work is billable monthly on a time and materials basis, such that if the hours are not spent, you will not be billed. Invoices are due within thirty (30) days of receipt, regardless of whether approvals are granted. Interest of one and one-half percent (1.5%) will be charged per month on unpaid bills after ninety (90) days. If the scope should significantly change or if the schedule is extended past June 30, 2021, we will revise the budget accordingly and resubmit it for your approval. HSH does not accept payment in cash. Payment by check or Automated Clearing House (ACH) is preferred.



Termination: Consultant services may be terminated by either party with or without cause upon 10 days advance written notice. Regardless of which party shall affect termination, Client shall, within 30 calendar days of termination, pay HSH for services rendered and all costs incurred up to the time of termination, as well as those costs associated with the termination itself, if any, in accordance with HSH's then-prevailing labor rates. Upon termination of services and full payment of consultant fees, HSH will release all work product related to this contract.

Indemnification: Client and HSH will indemnify and each hold harmless each other's employees, officers, directors, and subconsultants from and against all claims and actions, including reasonable attorney fees, arising out of or related to damages or injuries to persons or property related or connected to acts of each other or their employees, officers, directors, subconsultants or agents.

Insurance: During the period that services are performed under this Agreement, HSH will maintain the following insurance: (1) Workers Compensation coverage in accordance with the laws of the Commonwealth of Massachusetts; (2) Commercial General Liability with a limit of \$1,000,000 per occurrence and a \$2,000,000 general aggregate; (3) Non-owned and Hired Automobile Liability coverage with a combined single limit of \$1,000,000 and (4) Professional Liability coverage with a \$5,000,000 aggregate limit (claims made basis). Client agrees that HSH will not be liable for any loss, damage, or liability arising out of this Agreement beyond the limits of available insurance coverage.

Permits/Licenses: HSH is committed to providing technical support to facilitate project progress and approval. However, there are often circumstances beyond HSH's control and responsibility that may affect a project's ability to obtain permits/licenses or necessary written approvals. Therefore, unless indicated within this proposal, HSH does not guarantee our ability to obtain any project permits/licenses or approvals from any agency having jurisdiction over the project.



Approval

Should this proposal be acceptable to you, this letter can serve as a contract by an authorized signature below and returning a copy to us. Should our understanding of the Project be incorrect or incomplete, or should you have any revisions or changes, please contact me directly and we will incorporate them as directed. Thank you for contacting HSH; we look forward to working with you.

Sincerely,

Approved in the amount of \$390,000
City of Newton

Thomas A. Stokes, P.E.
 Chief Executive Officer

By: _____

Date: _____

Attachments:

- Work Hour Estimate
- Landscaping Subconsultant Proposal – Halvorson Design



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 3/4/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ames & Gough 859 Willard Street Suite 320 Quincy, MA 02169	CONTACT NAME: PHONE (A/C, No, Ext): (617) 328-6555	FAX (A/C, No): (617) 328-6888	
	E-MAIL ADDRESS: boston@amesgough.com		
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED Howard/Stein-Hudson Associates, Inc 11 Beacon Street, 10th Floor Boston, MA 02108	INSURER A : Sentinel Insurance Company, LTD (XV) A+		11000
	INSURER B : Hartford Accident and Indemnity Company A+ (XV)		22357
	INSURER C : Continental Casualty Company (CNA) A, XV		20443
	INSURER D :		
	INSURER E :		
INSURER F :			

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																					
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	X		08SBWIM4553	10/15/2020	10/15/2021	<table style="width: 100%; border-collapse: collapse;"> <tr><td>EACH OCCURRENCE</td><td style="text-align: right;">\$</td><td style="text-align: right;">1,000,000</td></tr> <tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td style="text-align: right;">\$</td><td style="text-align: right;">1,000,000</td></tr> <tr><td>MED EXP (Any one person)</td><td style="text-align: right;">\$</td><td style="text-align: right;">10,000</td></tr> <tr><td>PERSONAL & ADV INJURY</td><td style="text-align: right;">\$</td><td style="text-align: right;">1,000,000</td></tr> <tr><td>GENERAL AGGREGATE</td><td style="text-align: right;">\$</td><td style="text-align: right;">2,000,000</td></tr> <tr><td>PRODUCTS - COMP/OP AGG</td><td style="text-align: right;">\$</td><td style="text-align: right;">2,000,000</td></tr> <tr><td></td><td style="text-align: right;">\$</td><td></td></tr> </table>	EACH OCCURRENCE	\$	1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	1,000,000	MED EXP (Any one person)	\$	10,000	PERSONAL & ADV INJURY	\$	1,000,000	GENERAL AGGREGATE	\$	2,000,000	PRODUCTS - COMP/OP AGG	\$	2,000,000		\$	
EACH OCCURRENCE	\$	1,000,000																										
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$	1,000,000																										
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PRODUCTS - COMP/OP AGG	\$	2,000,000																										
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A	<input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			08SBWIM4553	10/15/2020	10/15/2021	<table style="width: 100%; border-collapse: collapse;"> <tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td style="text-align: right;">\$</td><td style="text-align: right;">1,000,000</td></tr> <tr><td>BODILY INJURY (Per person)</td><td style="text-align: right;">\$</td><td></td></tr> <tr><td>BODILY INJURY (Per accident)</td><td style="text-align: right;">\$</td><td></td></tr> <tr><td>PROPERTY DAMAGE (Per accident)</td><td style="text-align: right;">\$</td><td></td></tr> <tr><td></td><td style="text-align: right;">\$</td><td></td></tr> </table>	COMBINED SINGLE LIMIT (Ea accident)	\$	1,000,000	BODILY INJURY (Per person)	\$		BODILY INJURY (Per accident)	\$		PROPERTY DAMAGE (Per accident)	\$			\$							
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EACH OCCURRENCE	\$	7,000,000																										
AGGREGATE	\$	7,000,000																										
	\$																											
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	08WEGCR0906	10/15/2020	10/15/2021	<table style="width: 100%; border-collapse: collapse;"> <tr><td><input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER</td><td style="text-align: right;"></td><td style="text-align: right;"></td></tr> <tr><td>E.L. EACH ACCIDENT</td><td style="text-align: right;">\$</td><td style="text-align: right;">1,000,000</td></tr> <tr><td>E.L. DISEASE - EA EMPLOYEE</td><td style="text-align: right;">\$</td><td style="text-align: right;">1,000,000</td></tr> <tr><td>E.L. DISEASE - POLICY LIMIT</td><td style="text-align: right;">\$</td><td style="text-align: right;">1,000,000</td></tr> </table>	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER			E.L. EACH ACCIDENT	\$	1,000,000	E.L. DISEASE - EA EMPLOYEE	\$	1,000,000	E.L. DISEASE - POLICY LIMIT	\$	1,000,000									
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E.L. DISEASE - EA EMPLOYEE	\$	1,000,000																										
E.L. DISEASE - POLICY LIMIT	\$	1,000,000																										
C	Professional Liab			MCH113846846	10/15/2020	10/15/2021	Per Claim	5,000,000																				
C				MCH113846846	10/15/2020	10/15/2021	Aggregate	5,000,000																				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 All coverages are in accordance with the policy terms and conditions.

Newton Carriage Rd Corridor Improvements Phase I; HSH Project # 2019063.01
 City of Newton shall be included as additional insured with respects to General Liability where required by written contract.

CERTIFICATE HOLDER The City of Newton 1000 Commonwealth Avenue Newton Center, MA 02459	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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Invoice

HOWARD/STEIN-HUDSON ASSOCIATES
11 BEACON STREET, SUITE 1010
BOSTON, MA 02108
617-482-7080

Nicole Freedma
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

December 10, 2021

Invoice No: 2019063.01 - 19

Due Date: January 9, 2022

Invoice Total	\$15,097.50
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Project 2019063.01 Newton Carriage Rd Corridor Improvements

Professional Services from October 31, 2021 to November 27, 2021

Phase 100 Project Development

Professional Personnel

	Hours	Rate	Amount	
Sousa, Kayla	.50	155.00	77.50	
Totals	.50		77.50	
Total Labor				77.50
		Total this Phase		\$77.50

Phase 400 75% Highway Design Submission

Professional Personnel

	Hours	Rate	Amount	
Sousa, Kayla	.50	155.00	77.50	
Totals	.50		77.50	
Total Labor				77.50
		Total this Phase		\$77.50

Phase 500 Right of Way

Professional Personnel

	Hours	Rate	Amount	
Katira, Sonam	2.00	120.00	240.00	
Roose, Jason	1.50	150.00	225.00	
Sousa, Kayla	4.00	155.00	620.00	
Totals	7.50		1,085.00	
Total Labor				1,085.00
		Total this Phase		\$1,085.00

Phase 998 Ash Street - Additional Warrant Work
 Extra work for Ash Street Signal Warrant Analysis

Professional Personnel

	Hours	Rate	Amount
Battle, Ervin	1.00	165.00	165.00
Bleeker, Angela	24.00	135.00	3,240.00
Catalano, Tyler	.50	110.00	55.00
DiGiacomo, Matthew	10.00	140.00	1,400.00
Enteado, Emma	22.50	135.00	3,037.50
Gravallese, Mark	1.00	265.00	265.00
Jasmin, Matthew	1.00	200.00	200.00
Lizza, Jessica	4.00	200.00	800.00
Matton, David	2.00	315.00	630.00
Mullins, Christopher	6.00	135.00	810.00
Sousa, Kayla	13.00	155.00	2,015.00
Tofuri, Marissa	1.00	90.00	90.00
Totals	86.00		12,707.50
Total Labor			12,707.50
		Total this Phase	\$12,707.50

Phase EXP Expenses

Consultants

Precision Data Industries, LLC			
11/30/2021	Precision Data Industries, LLC	Traffic Counts (10/21/21)	1,150.00
	Total Consultants	1.0 times	1,150.00
		Total this Phase	\$1,150.00
		Total this Invoice	<u>\$15,097.50</u>

Outstanding Invoices

Number	Date	Balance
18	11/4/2021	9,027.50
Total		9,027.50
	Total Now Due	\$24,125.00

Phase I Budget:	\$ 200,000.00
Phase I Billed to Date:	\$ 199,913.10
Balance:	\$ 86.90

Phase 11 Budget:	\$ 390,000.00
Phase II Billings through Inv. 19	\$ 129,851.23
Phase II Balance:	\$ 260,148.77


 Robert M. Dankese, Jr., CFO



Precision Data Industries, LLC
 157 Washington Street, Suite 2
 Hudson, MA 01749
 508-875-0100

336-22
Invoice

BILL TO
Howard Howard/Stein-Hudson Associates, Inc Attn: Accounts Payable 11 Beacon Street, 10th Floor Boston, MA 02108

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
218240	11/19/2021	\$1,150.00	12/19/2021	Net 30 Days	

CLIENT PROJECT # TBA	ENGINEER Jessica Lizza	PROJECT LOCATION Newton, MA
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DATE	DESCRIPTION	HRS/QTY	RATE	AMOUNT
	(2) 6-10am/ 4-9pm Ped Crosswalks (Thurs 10/21/2021)	18	50.00	900.00
	(1) 24HR Radar ATR (Thurs 10/21/2021)	1	200.00	200.00
	Time and Travel	1	50.00	50.00

Thank You for your business!

BALANCE DUE

\$1,150.00

Please Make Check Payable to:
 Our New Address:

Precision Data Industries, LLC
 157 Washington Street, Suite 2
 Hudson, MA 01749

Invoice

HOWARD/STEIN-HUDSON ASSOCIATES
11 BEACON STREET, SUITE 1010
BOSTON, MA 02108
617-482-7080

Nicole Freedman
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

January 3, 2022

Invoice No: 2019063.01 - 20

Due Date: February 2, 2022

Invoice Total	\$15,697.50
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Project 2019063.01 Newton Carriage Rd Corridor Improvements

Professional Services from November 28, 2021 to December 25, 2021

Phase 100 Project Development

Professional Personnel

	Hours	Rate	Amount	
Sousa, Kayla	.50	155.00	77.50	
Totals	.50		77.50	
Total Labor				77.50
		Total this Phase		\$77.50

Phase 400 75% Highway Design Submission

Professional Personnel

	Hours	Rate	Amount	
Bleeker, Angela	1.00	135.00	135.00	
DiGiacomo, Matthew	15.50	140.00	2,170.00	
Gravallese, Mark	2.00	265.00	530.00	
Kuebler, Hans	.50	175.00	87.50	
Nelson, Daniel	1.00	220.00	220.00	
Sousa, Kayla	30.00	155.00	4,650.00	
Totals	50.00		7,792.50	
Total Labor				7,792.50
		Total this Phase		\$7,792.50

Phase 500 Right of Way

Professional Personnel

	Hours	Rate	Amount	
Roose, Jason	3.50	150.00	525.00	
Totals	3.50		525.00	
Total Labor				525.00
		Total this Phase		\$525.00

Phase 998 Ash Street - Additional Warrant Work
Extra Work for Ash Street Signal Warrant Analysis

Professional Personnel

	Hours	Rate	Amount	
Lizza, Jessica	1.50	200.00	300.00	
Sousa, Kayla	1.50	155.00	232.50	
Totals	3.00		532.50	
Total Labor				532.50
				Total this Phase \$532.50

Phase EXP Expenses
Consultants

Accurate Counts					
12/15/2021	Accurate Counts	Traffic Counts		6,770.00	
	Total Consultants		1.0 times	6,770.00	6,770.00
				Total this Phase	\$6,770.00
				Total this Invoice	<u>\$15,697.50</u>

Outstanding Invoices

Number	Date	Balance		
18	11/4/2021	9,027.50		
Total		9,027.50		
			Total Now Due	\$24,725.00

Phase 11 Budget:	\$ 390,000.00
Phase II Billings through Inv. 20	\$ 145,548.73
Phase II Balance:	\$ 244,451.27



 Robert M. Dankese, Jr., CFO

PAYMENT TERMS: NET30 DAYS
 HSH accepts ACH payments. Please email kpelland@hshassoc.com for more information



ACCURATE COUNTS
PO Box 38
North Reading, MA 01864 US
978-664-2565

BILL TO

Howard/Stein-Hudson Assoc.
11 Beacon Street, Suite 1010
Boston, MA 02108

INVOICE 10268

DATE 07/15/2021 **TERMS** 30 days

P.O. NUMBER
2019068

LOCATION
Newton

REQUESTED BY
K. Sousa

ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
8 Hour TMC	8 Hour TMC	4:00	480.00	1,920.00
13 Hour TMC	13 hour TMC	4:00	650.00	2,600.00
5 Day	5 Day ATR	5:00	450.00	2,250.00

TOTAL DUE **\$6,770.00**

12/1/2021

Bill to 2019063.01 EXP

Invoice

HOWARD/STEIN-HUDSON ASSOCIATES
 11 BEACON STREET, SUITE 1010
 BOSTON, MA 02108
 617-482-7080

Nicole Freedman
 City of Newton
 1000 Commonwealth Avenue
 Newton, MA 02459

May 3, 2022
 Invoice No: 2019063.01 - 24

Due Date: June 2, 2022

Invoice Total	\$28,811.82
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Project 2019063.01 Newton Carriage Rd Corridor Improvements

Professional Services from March 27, 2022 to April 30, 2022

Phase 350 Design Public Hearing

Professional Personnel

	Hours	Rate	Amount	
Sousa, Kayla	3.50	155.00	542.50	
Totals	3.50		542.50	
Total Labor				542.50
		Total this Phase		\$542.50

Phase 400 75% Highway Design Submission

Professional Personnel

	Hours	Rate	Amount	
Sousa, Kayla	1.00	155.00	155.00	
Totals	1.00		155.00	
Total Labor				155.00
		Total this Phase		\$155.00

Phase 998 Ash Street - Additional Warrant Work Signal Warrant Analysis

Professional Personnel


	Hours	Rate	Amount
Ayala-Mendoza, Ziomara	1.00	120.00	120.00
Bleeker, Angela	1.00	135.00	135.00
Catalano, Tyler	.50	110.00	55.00
DiGiacomo, Matthew	9.00	140.00	1,260.00
Fabiszewski, Andrew	20.00	150.00	3,000.00
Gravallese, Mark	1.00	265.00	265.00
Jasmin, Matthew	6.00	215.00	1,290.00
Lizza, Jessica	26.50	200.00	5,300.00
Lyman, Christopher	3.50	135.00	472.50
Malloy, Kyle	16.00	150.00	2,400.00
Mullins, Christopher	12.00	135.00	1,620.00

Pierre-Louis, Ashley	13.50	120.00	1,620.00	
Sousa, Kayla	65.50	155.00	10,152.50	
Stathopoulos, Haralampos	1.00	195.00	195.00	
Wong, Teren	.50	150.00	75.00	
Totals	177.00		27,960.00	
Total Labor				27,960.00
		Total this Phase		\$27,960.00

Phase	EXP	Expenses		
Reimbursable Expenses				
Mark Gravallese				
4/7/2022	Mark Gravallese	Mileage (120) re: Newton Carriageway Site visit-3/10	70.20	
4/7/2022	Mark Gravallese	Parking re: Newton Carriageway Site visit-3/10	42.00	
Christopher Lyman				
4/12/2022	Christopher Lyman	Mileage (72) re: Drone Photos for graphic for City Council-4/6	42.12	
	Total Reimbursables		1.0 times	154.32
			Total this Phase	\$154.32
		Total this Invoice		<u><u>\$28,811.82</u></u>

Phase I Budget:	\$200,000.00
Phase I Billed to Date:	\$199,913.10
Balance:	\$86.90

Phase 11 Budget:	\$390,000.00
	\$
Phase II Billings through	189,183.65
Phase II Balance:	\$200,816.35



 Robert M. Dankese, Jr., CFO

PAYMENT TERMS: NET30 DAYS
 HSH accepts ACH payments. Please email kpelland@hshassoc.com for more information



March 23, 2022

Ms. Nicole Freedman
Director of Transportation Planning
City of Newton
1000 Commonwealth Avenue
Newton, MA

Re: Newton – Carriage Road Corridor Improvements – Contract Amendment

Dear Ms. Freedman:

Howard Stein Hudson (HSH) has enjoyed working with the City of Newton on the Carriage Road Corridor Improvements to provide separated bicycle and pedestrian facilities along a section of Commonwealth Avenue/Route 30 within the Newton, Massachusetts. This work was divided into two phases: Phase I scope of work included all the work required to bring the design to a 25% submission and was completed in November 2020. Phase II scope of work includes the 25% Design Public Hearing, and the successive 75%/100%/PS&E design submissions that would lead to construction.

Since submission of the 25% design, there has been additional coordination required due to a scope change at Ash Street where the existing signal was deemed to be unwarranted. The additional level of effort required to facilitate Massachusetts Department of Transportation (MassDOT) and City approval of an alternate Ash Street intersection design was beyond the scope included in Phase II. This requested contract amendment identifies additional scope and fee to cover services required due to out-of-scope work performed after the 25% design.

To facilitate the extensive public and stakeholder outreach associated with the redesign at Ash Street, the following work was completed under the direction of the City of Newton:

- Coordination with MassDOT including several follow-up meetings after the April 2021 Comment Resolution Meeting;
- Additional traffic counts requests and technical memorandums submitted to MassDOT related to efforts to determine if a signal or HAWK could be appropriate at Ash Street;
- Traffic analysis using both Streetlight data and additional counts to re-analyze the signal warrant analysis, as well as direct expenses to pay for the additional counts;
- Development of three new concepts at Ash Street to show design alternatives to the public;
- An additional public information meeting hosted with the City of Newton in September 2021, which included creating a presentation, a prep meeting with the City Council, and



summarizing comments from the public, and direct expenses for the Zoom Webinar and Social Pinpoint online comment platform;

- A partial 25% design re-submission to show a redesign of the Ash Street intersection as unsignalized, including an updated Functional Design Report, Design Justification Workbook, partial plan, and coordination and response to comments to both the City of Newton and MassDOT;
- Updates to 75% design that had been progressed west of Islington Road at the direction of the City when alignment changes were pursued to allow for additional traffic calming;
- Additional coordination following the MassDOT Design Public Hearing, including data collection efforts at the Mayor's request to time the delay of drivers taking turns out of Islington Road and a site visit with Newton key staff; and
- Additional coordination with the Massachusetts Bay Transportation Authority (MBTA) as the bus stop location selected during 25% design needed to be re-evaluated since the Ash Street signal could not be retained.

Additional out of scope items unrelated to the Ash Street Signal include:

- Inclusion of a subconsultant to perform analysis of the proposed design on the Massachusetts Water Resources Authority (MWRA) pipe.
 - During utility coordination post-25% design, the MWRA communicated that this would be required as a part of the 8(m) permit application. HSH has discussed the need for this with the City of Newton and it is documented in monthly progress reports.
- Additional stakeholder engagement such as:
 - A parking study to address concerns from the Commonwealth Veterinary Hospital and attendance at Public Facilities Commission and City Council meetings.
 - The City also requested a contingency item to allow flexibility for other challenges that may arise as the design progresses.

Due to funding deadlines at the City, this amendment is being submitted before the decision has been reached on the Ash Street design and prior to coordination with MassDOT and the City on a potential signal removal study. If the preferred alternative is selected and Ash Street is to be reconstructed as unsignalized, MassDOT or the City may determine that a signal removal study is needed. Since the details of this are yet to be determined, this amendment does not include any work associated with a potential traffic signal removal study and a future amendment would be required to cover that scope.



Fee for Services

To complete the remaining scope of services as outlined in the Phase II contract, additional fee is requested to cover the out-of-scope effort as outlined above. The Phase II contract was executed in December 2020 and language under the fee for services indicated that if the work if the scope should significantly change or if the schedule is extended past June 30, 2021, we would revise the budget accordingly. Due to the increase in staff hourly rates, the fees calculated in the fee table for additional and out-of-scope work utilize our new hourly rates. Fees will be billed on a time and materials basis and in accordance with the attached fee schedule. Our labor plus direct expenses estimate for these services is **\$133,502**.

Task	Budget
Phase II: Out of Scope Work	
Ash Street Scope Change Re-Work and Additional Coordination	\$45,000
Phase II: Additional Services	
Parking Study	\$10,000
City of Newton Meetings	\$10,000
Contingency	\$50,000
Direct Expenses	
Travel	\$1,000
Additional Counts	\$7,920
MWRA Pipe Analysis	\$7,500
Social Pinpoint and Zoom webinar for 9/21 PIM	\$1,582
PROJECT TOTAL	\$133,002

Materials or reimbursable (direct) expenses will be billed at cost plus ten percent. Materials or reimbursable expenses are actual expenditures made by HSH in the interest of the project and include but are not limited to printing, photocopying, delivery charges, postage, research materials, local transportation, and any other expenses incurred in the interest of the project. Reimbursable expenses do not include permit filing fees.

Meetings are budgeted as outlined above; additional meetings, if required, will be billed at the hourly rates shown in the attached rate schedule. Additional team and agency meetings generally cost between \$500 – \$750 per meeting, depending on the duration of each meeting and the staffing required. Additional community meetings range higher at up to \$1,250 per meeting depending on the



need to provide supporting materials/graphics and the overall length of the meeting and any possible team preparation. All additional meetings will be invoiced on a time and materials basis based solely on hours expended as well as any travel costs.

While HSH feels the scope of work and associated fee provided in this proposal is appropriate for this type and size of development in this location and that it will be acceptable to reviewing agencies, should the scope of work change either by request of the Client, reviewing agencies, or the community, HSH will provide an additional services request for advance review and approval by the Client.

Terms

Payment of Services: The project work is billable monthly on a time and materials basis, such that if the hours are not spent, you will not be billed. Invoices are due within thirty (30) days of receipt, regardless of whether approvals are granted. Interest of one and one-half percent (1.5%) will be charged per month on unpaid bills after ninety (90) days. If the scope should significantly change or if the schedule is extended past June 30, 2022, we will revise the budget accordingly and resubmit it for your approval. HSH does not accept payment in cash. Payment by check or Automated Clearing House (ACH) is preferred.

Termination: Consultant services may be terminated by either party with or without cause upon 10 days advance written notice. Regardless of which party shall affect termination, Client shall, within 30 calendar days of termination, pay HSH for services rendered and all costs incurred up to the time of termination, as well as those costs associated with the termination itself, if any, in accordance with HSH's then-prevailing labor rates. Upon termination of services and full payment of consultant fees, HSH will release all work product related to this contract.

Indemnification: Client and HSH will indemnify and each hold harmless each other's employees, officers, directors, and subconsultants from and against all claims and actions, including reasonable attorney fees, arising out of or related to damages or injuries to persons or property related or connected to acts of each other or their employees, officers, directors, subconsultants or agents.

Insurance: During the period that services are performed under this Agreement, HSH will maintain the following insurance: (1) Workers Compensation coverage in accordance with the laws of the Commonwealth of Massachusetts; (2) Commercial General Liability with a limit of \$1,000,000 per occurrence and a \$2,000,000 general aggregate; (3) Non-owned and Hired Automobile Liability coverage with a combined single limit of \$1,000,000 and (4) Professional Liability coverage with a \$5,000,000 aggregate limit (claims made basis). Client agrees that HSH will not be liable for any



loss, damage, or liability arising out of this Agreement beyond the limits of available insurance coverage.

Permits/Licenses: HSH is committed to providing technical support to facilitate project progress and approval. However, there are often circumstances beyond HSH’s control and responsibility that may affect a project’s ability to obtain permits/licenses or necessary written approvals. Therefore, unless indicated within this proposal, HSH does not guarantee our ability to obtain any project permits/licenses or approvals from any agency having jurisdiction over the project.

Approval

Should this proposal be acceptable to you, this letter can serve as a contract by an authorized signature below and returning a copy to us. Should our understanding of the Project be incorrect or incomplete, or should you have any revisions or changes, please contact me directly and we will incorporate them as directed. Thank you for contacting HSH; we look forward to working with you.

Sincerely,

Thomas A. Stokes, P.E.
Chief Executive Officer

Approved in the amount of \$133,002
City of Newton

By: _____

Date: _____

Attachments: MWRA Pipe Analysis Quote

PROJECT NAME : Reconstruction Route 30 East of Auburn Street - MWRA 8M Permit Support DATE : 10/13/2021
LOCATION : Newton, MA GEO PROJECT NUMBER: 24116-028-01

QUOTATION FOR DESIGN SERVICES

SCOPE OF WORK :

GeoEngineers USA (GeoEngineers) understands that Howard Stein Hudson (HSH) requires support in obtaining the MWRA 8M permit for the 610674 - Reconstruction of Commonwealth Avenue (Route 30) East of Auburn Street to Ash Street project in Newton, Massachusetts. The project consists of repurposing the existing carriageway into a separated bike lane from the Marriott to Islington Road, and pavement mill and overlay along the mainline of Route 30 (Commonwealth Avenue). Between Islington Road and Ash Street (in front of Lyons field) pavement reconstruction is also planned to support formalized parking that will also include full depth work over the northern 60-inch diameter MWRA pipeline.

Based on our understanding of the project, we propose to evaluate the MWRA pipelines to support the MWRA 8M permit process. We will evaluate the structural integrity of the existing pipes as a result of the proposed excavation. We will provide loading analysis for typical construction equipment for this type of work.

We are in receipt of the proposed plan and sections that include the MWRA pipelines. We will provide a calculation package at the completion of our analyses in support of obtaining an 8M permit from the MWRA.

BASIS OF CHARGES :

Description	Estimated Qty.	Unit Price	Estimate
Design Services			
Logistics plan review	1	\$500 LS	\$500
Develop loading conditions and analyze pipes	1	\$4,500 LS	\$4,500
Submit analysis to HSH and discuss	1	\$1,000 LS	\$1,000
Prepare response to MWRA comments	1	\$1,500 LS	\$1,500
TOTAL			\$7,500


SCHEDULE AND CONDITIONS :

GeoEngineers is prepared to undertake this work immediately upon receipt of your notice to proceed. We propose to conduct our services in accordance with the terms of our General Conditions, attached as part of this quotation. This quotation is based on the anticipated scope of work outlined above, which represents our present judgment as to the level of effort required. Additional work, outside the scope detailed above will be invoiced on a time and expense basis in accordance with the rates of our Schedule of Charges, attached. If you have any questions or require additional information, please contact Franklin Gryniewicz at (781) 413 7240. Authorization to initiate GeoEngineers services shall be considered as formal acceptance of the scope of services and all the terms and conditions of this Agreement unless otherwise agreed to in writing by both parties.

ACCEPTANCE:

The parties hereto have made, executed and agreed to this Agreement as of the day and year first above written. By signature below, Client accepts the scope of services and all the terms described herein. In addition, Client's signature shall constitute as authorization to process on the date listed below Client's printed/typed name unless such authorization has been otherwise provided in writing.

GeoEngineers USA, PC



*AUTHORIZING SIGNATURE

Franklin M Gryniewicz, P.E.

TYPED OR PRINTED NAME

10/13/2021

DATE

Howard Stein Hudson

*AUTHORIZING SIGNATURE

TYPED OR PRINTED NAME

DATE

*Individual with contracting authority

Proprietary Notice: The contents of this document are proprietary to GeoEngineers USA, PC and are intended solely for use by clients and their design teams to evaluate GeoEngineers USA's capabilities and understanding of project requirements as they relate to performing the services proposed for a specific project. Copies of this document and its contents may not be disclosed to any other parties without the written consent of GeoEngineers USA.

Disclaimer: Any electronic form, facsimile or hard copy of the original document (email, text, table, and/or figure), if provided, and any attachments are only a copy of the original document. The original document is stored by GeoEngineers USA, PC and will serve as the official document of record.

GENERAL CONDITIONS

Definitions

When used in this Agreement, the words and phrases listed below are defined as follows:

Agreement: The complete agreement between Client and GeoEngineers USA, and consists of all of the following: 1) The Services Agreement or Proposal, including the Scope of Services contained within it; 2) These General Conditions and its attached Schedule of Charges, as applicable; 3) Any documents expressly incorporated by reference into the Services Agreement or Proposal or General Conditions; 4) Any modifications to this Agreement, if mutually agreed to by the parties in writing.

Client: The individual(s) or entity that has entered into this Agreement with GeoEngineers USA.

GeoEngineers USA, P.C.: GeoEngineers USA, P.C. a Washington corporation, and any of its employees, officers and directors. GeoEngineers USA is sometimes referred to as "us", "we" or "our" throughout this Agreement.

Integrated Written Agreement

This Agreement represents the entire and integrated agreement between Client and GeoEngineers USA and supersedes all prior communications, negotiations, representations or agreements, either written or oral between the parties. No agreement or understanding varying or extending this Agreement shall bind either party, other than by a subsequent written agreement, signed by Client and GeoEngineers USA.

GeoEngineers USA has made no promise or inducements to Client to enter into this agreement other than what is explicitly provided in the agreement. Client is not relying on any representations made by GeoEngineers USA outside of those embodied in this Agreement.

Standard of Care and Warranty Disclaimer

GeoEngineers USA will endeavor to perform its professional services with that degree of care and skill ordinarily exercised under similar conditions by professional consultants practicing in the same discipline at the same time and location. No warranty or guarantee, either express or implied, is made or intended by this Agreement or by any report, opinion, or other Instrument of Service provided pursuant to this Agreement.

Client Furnished Information and Obligations

The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys, and instructions required by this Agreement. GeoEngineers USA may use such information, requirements, reports, data, surveys and instructions in performing the services and is entitled to rely upon their accuracy and completeness.

Scope of Services and Additional Services

Our engagement under this Agreement includes only those services specified in the Scope of Services. GeoEngineers USA has no duty to provide services beyond those explicitly described in the scope of services, or as may be changed (provided that such changes do not materially change the original scope) or added via a signed directive by the Client, as described more fully in the next paragraph. Client understands and agrees that GeoEngineers USA's scope will not be expanded by, and no duties or responsibilities may be imputed from GeoEngineers USA's actions or affirmative conduct.

If agreed to in writing by the Client and GeoEngineers USA, GeoEngineers USA shall provide the additional services which shall become part of the Scope of Services and subject to the terms of this agreement. Such services shall be paid for by the Client in accordance with GeoEngineers USA's then prevailing Schedule of Charges unless otherwise agreed to in writing by the parties.

Confidential Information

Unless otherwise agreed to in writing by the parties, each party expressly undertakes to retain in confidence, and to require its employees and consultants to retain in confidence, all data and/or information of the other party that is not generally known to the public, whether of a technical, business or other nature, that has been identified as being proprietary and/or confidential or that by the nature of the circumstances surrounding the disclosure reasonably ought to be treated as proprietary and confidential ("Confidential Information"). Each party agrees not to use the Confidential Information of the other party except pursuant to this Agreement. The receiving party will not disclose any item of Confidential Information to any person other than its employees, agents or contractors who need to know the same in the performance of their duties except as may be required by law or judicial order. The receiving party will protect and maintain the confidentiality of all Confidential Information of the disclosing party with reasonable care, including but not limited to informing all employees, agents or contractors to whom Confidential Information is disclosed of the confidentiality obligations imposed by this Agreement. Confidential Information does not include any data or information which the receiving party can prove (a) was in the receiving party's lawful possession prior to its disclosure by the disclosing party; (b) is later lawfully obtained by the receiving party from a third party without notice to the receiving party of any obligation of confidentiality or other restrictions with respect to the use thereof; (c) is independently developed by the receiving party; (d) is, or later becomes, available to the public through no breach of an obligation of confidentiality by the receiving party; or (e) is approved for disclosure in writing by the disclosing party. Notwithstanding the foregoing, GeoEngineers USA may use the Client's name and logo in connection with identifying its prior customers and projects. Data and/or information that is disclosed due to a party's computer systems being hacked or through other such improper or illegal cyber conduct, including but not limited to phishing and viruses, shall not be considered a disclosure under this paragraph.

Instruments of Service and Proprietary Methodologies

Geoengineers USA shall assign ownership rights to Client over Instruments of Service prepared or developed hereunder by GeoEngineers USA, its employees, and subcontractors and subconsultant, and their employees or agents under this Agreement, including, but not limited to, documents, calculations, maps, sketches, designs, tracings notes, reports, and data ("Instruments of Service") as well as rights to copyrights, in the same manner and subject to the same conditions that Client is required to assign ownership over such Instruments of Service under the terms of the Prime Agreement. To the extent the Prime Agreement does not require Client to transfer ownership rights of such Instruments of Service, GeoEngineers USA shall retain such rights including any and all copyrights. In such event, however, Client and the Owner shall have a non-exclusive license to use such Instruments of Services solely for the purposes described in the Authorization. Said Instruments of Service shall, together with any materials furnished to GeoEngineers USA and its employees by Client hereunder, be delivered to Client upon request, and, in any event, upon termination (other than termination for cause by Client) or final acceptance of the Services, provided final payment of amounts not in dispute are made or assured. GeoEngineers USA shall provide copies of applicable Project information and documents to Client. Any modification to such Instruments of Service prepared or developed by GeoEngineers USA under this Agreement or reuse for purposes outside the scope of the Authorization by Prime or others without prior written permission of GeoEngineers USA shall be at user's sole risk and without liability to Client and Client shall defend, indemnify and hold GeoEngineers USA harmless from any claims, losses or damages arising from any such modification or reuse by Client or others acting on their behalf.

GeoEngineers USA, P.C. is an Affirmative Action and Equal Opportunity Employer

Billing and Payment

We will bill for our services monthly. Payment is due on receipt of the invoice unless otherwise agreed to in writing. Client will notify GeoEngineers USA within 20 days of receipt of invoice of amounts in dispute. A service charge of 1-1/2% per month shall apply to any undisputed amounts that are more than 30 calendar days past due and amounts in dispute where Client has not notified GeoEngineers USA within the 20-day period. In addition to any past due amount, Client will pay all of our reasonable expenses necessary for collection of any past due amounts including, but not limited to, attorneys' fees and expenses, filing fees, lien costs and our staff time. Collection efforts for past due amounts by GeoEngineers USA shall not be subject to the DISPUTES clause of these GENERAL CONDITIONS.

If Client is in breach of the payment terms, states their intention not to pay forthcoming invoices, or otherwise is in material breach of this Agreement, GeoEngineers USA may suspend performance of services upon five (5) calendar days' notice to Client or terminate this Agreement for cause according to the "Termination" provision. In the event of suspension, GeoEngineers USA shall have no liability to the Client, and the Client agrees to make no claim for any delay or damage as a result of such suspension caused by Client's breach of this Agreement. In addition, we may withhold submittal of any work product if Client is in arrears at any time during the performance of services under this Agreement. Upon receipt of payment in full of all outstanding sums due from Client, or curing of such other breach which caused GeoEngineers USA to suspend services, GeoEngineers USA shall resume services and submit any withheld work product, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of such suspension.

Adjustment for Increased Costs

GeoEngineers USA revises its Schedule of Charges annually. Therefore, we reserve the right to modify our Schedule of Charges applicable to our services if performance of this Agreement extends beyond 12 months, or if changes in the project schedule result in our services extending into the next calendar year.

Termination

Either party may terminate this Agreement upon seven (7) days written notice to the other for convenience or a material breach of this Agreement. In the event that Client requests early termination of our services, we reserve the right to complete such analyses and records as are necessary to place our files in order and to complete a report on the services performed to date. In the event of termination, GeoEngineers USA shall be paid for services performed up to the date of termination plus reasonable termination expenses. Upon termination by either party, all invoices for services performed up to the date of termination and termination fees defined herein are immediately due and payable.

Delays

The Client agrees that GeoEngineers USA is not responsible for damages arising directly or indirectly from any delays for causes beyond GeoEngineers USA's control. Such causes include, but are not limited to, strikes or other labor disputes, epidemics, quarantine restrictions, severe weather disruptions, fires, floods, earthquakes, tidal waves, riots, terrorist acts, freight embargoes, insurrections, wars, or other natural disasters, emergencies, or acts of God; failure of any government agency to act in a timely manner, failure of performance by the Client or the Client's Contractors or other Consultants; or unanticipated discovery of any hazardous materials or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or time required by GeoEngineers USA to perform its services in an orderly and efficient manner, GeoEngineers USA shall be entitled to an equitable adjustment in schedule and/or compensation.

Indemnification

GeoEngineers USA will defend indemnify and hold the Client harmless from and against any claims, liabilities, damages and costs (including reasonable attorney fees and costs of defense) arising out of death or bodily injury to persons or damage to property to the extent proven to be caused by or resulting from the sole negligence of GeoEngineers USA, its agents or its employees. For any such claims, liabilities, damages or costs caused by or resulting from the concurrent negligence of GeoEngineers USA and other parties, including the Client, the duty to indemnify shall apply only to the extent of GeoEngineers USA's proven negligence. For claims arising or alleged to arise from GeoEngineers USA's professional services, GeoEngineers USA's defense obligation under this indemnity paragraph shall include only reimbursement of reasonable defense costs to the extent caused by GeoEngineers USA's actual, proportional indemnity obligation hereunder.

By entering into this Agreement, Client acknowledges that this Indemnification provision has been reviewed, understood and is a material part of the Agreement, and that Client has had an opportunity to seek legal advice regarding this provision.

Limitation of Remedies

GeoEngineers USA's aggregate liability responsibility to Client, including that of our affiliates and subsidiaries, officers, directors, employees, agents and subconsultants, is limited to \$1,000,000 or the amount of GeoEngineers USA's fee under this Agreement, whichever is greater. This limitation of remedy applies to all lawsuits, claims or actions, whether identified as arising in tort, contract or other legal theory, (including without limitation, GeoEngineers USA's indemnity obligations in the previous paragraph) related to our services under this Agreement and any continuation or extension of our services.

If Client desires a higher limitation, GeoEngineers USA may agree, at Client's request, to increase the limitation of remedy amount to a greater sum in exchange for a negotiated increase in our fee. Any additional charge for a higher limit is consideration for the greater risk assumed by us and is not a charge for additional professional liability insurance. Any agreement to increase the limitation of remedy amount must be made in writing and signed by both parties in advance of the provision of services under this Agreement.

By entering into this Agreement, Client acknowledges that this Limitation of Remedies Clause has been reviewed, understood and is a material part of this Agreement, and that Client has had an opportunity to seek legal advice regarding this provision.

No Personal Liability

The Client agrees that, to the fullest extent permitted by law, no shareholder, officer, director, or employee of GeoEngineers USA shall have personal liability under this Agreement, or for any matter in connection with the professional services provided in connection with the Project.

Insurance

GeoEngineers USA maintains Workers' Compensation and Employer's Liability Insurance as required by state law. We also maintain comprehensive general, auto, professional and environmental impairment liability insurance. We will provide copies of certificates evidencing these policies at the request of the Client.

Mutual Waiver of Consequential Damages

In no event will either party be liable to the other for any special, indirect, incidental or consequential damages of any nature arising out of or related to the performance of this Agreement, whether founded in negligence, strict liability, warranty or breach of contract.

Disputes

Any dispute, controversy or claim arising out of or related to this Agreement or its breach that is not resolved through negotiation between the parties, must be referred to mediation before pursuing any other dispute remedy. Each party shall bear its own costs and attorneys' fees arising out of the mediation and the costs of the mediation shall be divided equally between the attending parties.

If the matter has not been resolved through the mediation process, either or both parties may elect to pursue resolution through litigation.

Choice of Law

This Agreement is governed by and subject to interpretation pursuant to the laws of the State where the projects site is located.

Time Bar to Legal Action

The parties agree that all legal actions by either party against the other concerning our services pursuant to this Agreement or for failure to perform in accordance with the applicable standard of care, however denominated, including but not limited to claims sounding in tort or in contract, and arising out of any alleged loss or any alleged error, will become barred two (2) years from the completion of GeoEngineers USA's services.

No Third-Party Rights

Nothing in this Agreement or as a consequence of any of the services provided gives any rights or benefits to anyone other than Client and GeoEngineers USA. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of Client and GeoEngineers USA and not for the benefit of any other party. No third party shall have the right to rely on the product of GeoEngineers USA's services without GeoEngineers USA's prior written consent and the third party's agreement to be bound to the same terms and conditions as the Client.

Assignment of Contract or Claims

Neither the Client nor GeoEngineers USA may delegate, assign, sublet, or transfer the duties, interests, claims, or responsibilities set forth in this Agreement, or any cause of action or claim relating to the services provided under this Agreement, to other entities without the written consent of the other party.

Survival

These terms and conditions survive the completion of the services under this Agreement and the termination of this Agreement, whether for cause or for convenience.

Severability

If any provision of this Agreement is ever held to be unenforceable, all remaining provisions will continue in full force and effect. Client and GeoEngineers USA agree that they will attempt in good faith to replace any unenforceable provision with one that is valid and enforceable, and which conforms as closely as possible with the original intent of any unenforceable provision.

Equal Opportunity Employment

GeoEngineers USA is an Equal Opportunity and Affirmative Action Employer. GeoEngineers USA shall abide by, and shall require that any subcontractors or vendors hired by GeoEngineers USA abide by, the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a) which are incorporated as part of this Agreement. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

Schedule of Charges – 2020

COMPENSATION

Our compensation will be determined on the basis of time and expenses in accordance with the following schedule unless a lump sum amount is so indicated in the proposal or services agreement. Current rates are:

Professional Staff

Staff 1 Engineer/Scientist/Analyst	\$	120/hour
Staff 2 Engineer/ Scientist/Analyst	\$	140/hour
Staff 3 Engineer/Scientist/Analyst	\$	155/hour
Project Engineer/ Scientist/Analyst	\$	185/hour
Senior Engineer/Scientist/Analyst	\$	200/hour
Associate	\$	230/hour
Principal	\$	250/hour

Technical Support Staff

Project Coordinator	\$	100/hour
CAD Designer	\$	130/hour

Contracted professional and technical services will be charged at the applicable hourly rates listed above. Staff time spent in depositions, trial preparation and court or hearing testimony will be billed at one and one-half times the above rates. Time spent in either local or inter-city travel, when travel is in the interest of this contract, will be charged in accordance with the foregoing schedule. Rates for data storage and web-based access will be provided on a project-specific basis.

OTHER SERVICES AND SPECIAL TAXES

*Charges for services, and any unusual items of expense not customarily incurred in our normal operations, will be charged at cost. This includes subsistence, travel, miscellaneous expenses incurred, special insurance which may be required, and taxes required by local jurisdictions for projects in specific geographic areas.

*Per diem may be charged in lieu of subsistence and lodging.

*Mileage (over 50 miles) will be charged at the current IRS rate.

Associated Project Costs (APC)

Technology, communications, miscellaneous field and office supplies, and expenses associated with local travel (within 50 miles) will be charged at a flat rate of 6 percent of labor charges. These charges are labeled as Associated Project Costs (APC).

All rates are subject to change upon notification.



RUTHANNE FULLER
MAYOR

City of Newton, Massachusetts
Office of the Mayor

369-22
Telephone
(617) 796-1100
Telefax
(617) 796-1113
TDD
(617) 796-1089
E-mail
rfuller@newtonma.gov

May 31, 2022

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Councilors:

I respectfully submit a docket item to your Honorable Council requesting authorization to appropriate and expend \$49.3 million (\$49,300,000) and authorize a general obligation borrowing of an equal amount for the renovation/addition to the 150 Jackson Road, the new home of the Lincoln Eliot Elementary School.

Further, I request that your Honorable Council authorize any premium received upon the sale of the bonds or notes, less the cost of preparing, issuing and marketing them, and any accrued interest received upon the delivery of the bonds or notes be applied to the costs of the project being financed by the bonds or notes and to reduce the amount authorized to be borrowed for the project by a like amount.

As you know, we have seen significant cost increases and supply chain issues. We expect that Josh Morse, Commissioner of Public Buildings, will update the potential cost of this project when he seeks site plan approval at the Public Facilities Committee.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller
Mayor

RECEIVED
2022 MAY 31 PM 5:24
CITY CLERK
NEWTON, MA, 02459



CITY OF NEWTON, MASSACHUSETTS

PUBLIC BUILDINGS DEPARTMENT52 ELLIOT STREET, NEWTON HIGHLANDS, MA 02461

Ruthanne Fuller, Mayor
Josh Morse
Building Commissioner

Telephone (617) 796-1600
Facsimile (617) 796-1601
TDD/tty # (617) 796-1608

May 26, 2022

Ruthanne Fuller, Mayor
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Re: Lincoln Eliot School

Dear Mayor Fuller:

The Public Buildings Department requests the balance of the funds needed to complete the above referenced project in the amount of \$49,337,000. Please see the project website page located at: <https://www.newtonma.gov/government/public-buildings/capital-projects-investing-now-for-newton-s-future/school-projects/lincoln-eliot>.

Sincerely,

Josh Morse
Public Buildings Commissioner

cc: Maureen Lemieux, Chief Financial Officer
Alex Valcarce, Deputy Buildings Commissioner

LINCOLN-ELIOT ELEMENTARY SCHOOL PROJECT COSTS

DATE: 5/31/2022

ACCOUNT NUMBER	CATEGORIES OF THE BUDGET	#18	ARPA Funding	New Request
58SB02	ARCHITECTURAL SERVICES	\$ 103,000.00		\$ 4,555,825.00
58SB01	OWNER'S PROJECT MANAGER	\$ 77,000.00		\$ 2,259,875.00
58SB03	SITE/ENVIRONMENTAL	\$ 133,000.00		\$ 110,000.00
58SB04	OTHER	\$ -		\$ 75,000.00
524070		\$ -	\$ 350,000.00	\$ -
58SB40	PROJECT CONTINGENCY	\$ -		\$ 1,000,000.00
582500	CONSTRUCTION	\$ -		\$ 37,500,000.00
58SB39	CONSTRUCTION CONTINGENCY	\$ -		\$ 2,236,300.00
585ITE	TECHNOLOGY	\$ -		\$ 800,000.00
585FFE	FF&E	\$ -		\$ 800,000.00
	TOTAL PROJECT EXPENDITURE BUDGET	\$ 313,000.00	\$ 350,000.00	\$ 49,337,000.00

City Council Vote (fees) and City Council Recommendations (permits)

TC34-22

- Finance Committee and City Council to **Vote**: Change the Fee for TIGER permits
 - *Finance Committee vote on X/X/22 to increase fee from \$25/year to \$XX/year.*
- PS&T **Recommendation to Traffic Council**: Increase # of TIGER Permits from 150 to 170.
 - 140 TIGER Permits to be distributed via a lottery by the NPD, as done historically.
 - 30 additional TIGER permits to be managed by the HS Administration.
 - 25/30 of these additional TIGER permits will be **annual stickers**, equivalent to the 140 permits listed above, except that they will be assigned by the HS Administration to specific students. HS Administration will specify students over the school year to the NPD. NPD will subsequently process and manage these TIGER permits and collect the fee, as set by City Council.
 - 5/30 of these additional TIGER permits will be **transferable placards** and will be retained by the HS Administration and distributed to students on an as-needed basis for short-term use. 5 Transferable TIGER placards will be created and managed by the HS Administration and can be used to park **on-campus(?)** or in student TIGER-parking areas, will be called TIGER permits, and will have no fee.
- Parking by TIGER permit (without paying on school days) in the Austin Lot to continue as an ongoing trial, until City Council determines whether to make this trail permanent.
- Pick-Up / Drop-Off zone on Lowell Avenue to continue as part of ongoing trial.



Memorandum

To: Members of the Finance Committee

From: Councilors Baker, Humphrey, and Noel

Subject: Docket item #263-22(2) relating to adjustment of the fines for leaf blower violations to \$300 after warning

Date: June 24, 2022

Three of us are members of the Programs and Services Committee that on June 8 considered recommendations to enhance compliance with the provisions of Newton's noise ordinance relating to leaf blowers. Docket item #263-22(2), below, came out of that discussion. This memo is designed to provide some brief background in advance of our discussion on June 27.

Referred to Programs & Services and Finance Committee

#263-22(2) Request for Discussion and Amendments to the Noise Ordinance

COUNCILORS BAKER, HUMPHREY, NORTON, RYAN, AND WRIGHT recommending discussion of possible amendments to strengthen the ordinances relating to leaf blower activity, including adjustment of fines to \$300 after a warning, [and consolidation of leaf blower violation fines in one section].

You may recall that in May of 2021, the Council voted to require landscapers doing business in Newton to register with the City and affirm as part of that registration process that the landscaping firm understands and will be complying with the leaf-blower provisions of the noise ordinance.

<https://www.newtonma.gov/home/showpublisheddocument/73583/637739497447030000>. Failure to register is subject to a flat \$300 fine after an initial warning.

To assure registration and then compliance with ordinance, the Inspectional Services Department has recently employed a part-time enforcement agent, Charles Edrehi, to assist Andrew Mavrelis, who heads up ISD's enforcement work. They have been warning, then ticketing, firms which have not registered. This process has added increased the number of registered landscapers.

<https://www.newtonma.gov/home/showpublisheddocument/73825/637914070268649489>.

While much less frequent, the ISD enforcement team have also been warning and ticketing operational violations when observed, usually for using improper more noisy equipment. They have been more recently sharing their leaf-blower enforcement data with the Newton police and vice-versa,

The revised ordinance does not fine the field personnel but instead the registered firm which provides the equipment. Also, homeowners who employ landscapers can avoid liability if they hire a registered firm. To make registration work, however, is important that those firms who are registered and abiding by the

ordinance not be at a competitive disadvantage with firms still out of compliance. The more firms that comply, the fewer calls to police or ISD, which can work proactively in the field but not respond to individual calls, like the police. 263-22(2)

The Commissioner of ISD, John Lojek, and his enforcement officer, Andrew Mavrelis, felt that having the same fine for operating violations as for failure to register would help enhance compliance, rather than having to keep track of which leaf-blower ordinance provision was violated by which contractor after a warning for purpose of a graduated fine. Police Chief John Carmichael concurred. Commissioner. Lojek and Mr. Mavrelis also felt it would be good to have all the leaf-blower fines consolidated in one place in the ordinance. Associate City Solicitor Marie Lawlor helped draft the language to accomplish these changes.

In response to this information, the Programs and Services Committee supported these adjustments to the ordinance 7-0. Because the current graduated fine would be replaced by a flat fine, the Committee felt that the Finance Committee should also approve it. Assuming the Finance Committee concurs, then the joint recommendations would be reported to the full Council at its July meeting, which would allow the adjusted fine to be effective for the balance of the summer and into the fall. The hope would be to enhance compliance further so that violations, and the enforcement responses they require, will be less frequent.

We hope that this information will be helpful in informing the Finance Committee discussion on Monday, but please let us know if you have any questions.

Cc: CAO Jonathan Yeo, Commissioner John Lojek, Chief John Carmichael, Associate City Solicitor Marie Lawlor

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

June , 2022

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON That the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **Section 20-13 of Article II of Chapter 20** and with respect to **Section 17-23 of Article III of Chapter 17** as follows:

1. **DELETE** Sec. 20-13 (h) (6) in its entirety and **INSERT** in its place the following language:

(6) Any violation of the restrictions contained in this section 20-13 (h) shall be subject to the penalties set forth in sections 20-13 (k) and (m) below, provided that the first offense by any person subject to this section, including a property owner, shall be subject to a warning only, and provided further that a violation committed by a commercial operator holding a valid permit and in good standing on the public list provided for in section (7) A, shall be enforced against the commercial operator only, and not against the property owner, manager or person in control of the property upon which the violation has occurred.

2. **DELETE** the reference to “subsection (j)” in the first clause of the first sentence of Sec. 20-13 (m) and **INSERT** in its place “subsection (k)” to correct a scrivener’s error.
3. **DELETE** in paragraph (c) INSPECTIONAL SERVICES DEPARTMENT of Sec. 17-23 the entries pertaining to Sec. 20-13, *Noise Control, any section except Sec. 20-13(h)(7)* and Sec. 20-13 (h) (7) and **INSERT** in their place the following language:

Sec. 20-13. Noise Control, any section except Sec. 20-13 (h)

- () First offense in calendar year Warning
- () Second offense in calendar year\$100.00
- () Third offense in calendar year.....\$200.00
- () Fourth or subsequent offense in calendar year..... \$300.00

Sec. 20-13 (h) Restrictions on use of Leaf Blowers - Any violation

- () First offense Warning
- () Second and subsequent offenses \$300.00

4. **DELETE** in paragraph (d) POLICE DEPARTMENT of Sec. 17-23 the entries pertaining to Sec. 20-13, *Noise Control*, any section except Sec. 20-13(h)(7) **and** Sec. 20-13 (h) (7) and **INSERT** in their place the following language:

Sec. 20-13. Noise Control, any section except Sec. 20-13 (h)

- () First offense in calendar year Warning
- () Second offense in calendar year\$100.00
- () Third offense in calendar year.....\$200.00
- () Fourth or subsequent offense in calendar year..... \$300.00

Sec. 20-13 (h) Restrictions on use of Leaf Blowers - Any violation

- () First offense Warning
- () Second and subsequent offenses \$300.00

Approved as to legal form and character:

ALISSA O. GIULIANI
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) CAROL MOORE
City Clerk

(SGD) RUTHANNE FULLER
Mayor

Chapter 20, Sec. 20-13(h)(6) and Chapter 17, Sec. 17-23 (c) and (d):*(h) Restrictions on use of leaf blowers.*

Notwithstanding the provisions of sections 20-13 (f) and (g), no property owner or the operation of leaf blowers on property under their control; no contractor or commercial landscaper, including a City contractor or employee, shall use or operate or authorize or permit any agent or employee to use or operate a leaf blower; nor shall any person use or operate a leaf blower within the City unless they do so in compliance with the provisions of this section. The following definitions shall apply to this section:

Leaf blower: any portable motorized device, whether carried or pushed, whether powered by gasoline or other fuel, electricity or battery, used in any landscape or property construction or maintenance activity, for the purpose of blowing, dispersing, redistributing, or removing dust, dirt, leaves, grass or plant clippings, litter or other debris.

Commercial leaf blower operator: any individual, entity or organization, including a contractor or commercial landscaper, that receives compensation for services that include operation of a leaf blower.

- (1) Summer Ban. No leaf blower may be operated from Memorial Day through Labor Day in each year, except that one 65 dB(A) electric or battery powered leaf blower per lot may be used during this period subject to the permitted hours of use specified in Subsection (2) below. At all other times leaf blowers may be operated subject to the following provisions:
- (2) *Permitted hours of use.* Leaf blowers may be operated only during the following times:

Monday - Friday: 7:00 a.m. - 5:00 p.m., except that the City of Newton, through its parks, recreation and culture department, shall be allowed to use leaf blowers prior to 7:00 a.m. for the sole purpose of maintaining city village centers.

Saturday: 8:00 a.m. - 5:00 p.m.

Sundays and legal holidays: prohibited except for operation by a resident of the property on which the leaf blower is operated between 9:30 a.m. and 5:00 p.m.; and except for operation of leaf blowers on contiguous lots under single ownership that total a minimum of thirty acres used for institutional or recreational purposes between 9:30 a.m. and 12:00 p.m.

- (3) Only leaf blowers meeting the following criteria are permitted for use:
- A. Leaf blowers must be manufactured after January 1, 2005 for EPA Class 4 engines and after January 1, 2008 for EPA Class 5 engines;
 - B. Leaf blowers must bear an affixed manufacturer's label indicating the model number of the leaf blower; such label must not be altered or concealed;
 - C. Leaf blowers must bear an affixed manufacturer's label documenting a noise rating of 65 dB(A) or less; such label must not be altered or concealed; and
 - D. Leaf blowers must only be used with any muffler, full extension tube and sound attenuating devices supplied by the manufacturer of the leaf blower. Non-factory modifications are not permitted.
- (4) During times of emergency caused by a storm or other special circumstance, the Mayor or his designee may temporarily suspend application of all or a portion of this section for purposes of cleaning up from such storm or other special circumstance.
- (5) The provisions of section 20-13 (i) shall not apply to leaf blower operation.
- (6) Any violation of the restrictions contained in this sections 20-13 (h)~~(4) through (h)(6) above~~ shall be subject to the penalties set forth in sections 20-13 (k) and (m) below, provided that the first offense by any person subject to this section, including a property owner, shall be subject to a warning only, and provided further that a violation committed by a commercial operator holding a valid permit and in good standing on the public list provided for in section (7) A, shall be enforced against the commercial operator only, and not against the property owner, manager or person in control of the property upon which the violation has occurred. ~~In addition, penalties after warning for commercial leaf blower operation in violation of the restrictions in this Section 20-13 (h)(1-3) shall be \$300 for each offense.~~
- (7) Commercial Leaf Blower Operators - permit required.
- A. No commercial leaf blower operator may operate a leaf blower or permit or authorize an agent or employee to operate a leaf blower in the City of Newton without an annual permit from the commissioner of inspectional services, who shall provide application forms; who may establish rules governing the display of permits on permittee's vehicles; and who shall maintain a public

list of commercial leaf blower operators who hold a valid permit under this section. The commissioner may set a reasonable fee for such permit. Such application form shall require the name and telephone number of a contact and shall require the applicant to certify under pains and penalties of perjury that they have read and understand this ordinance pertaining to leaf blower restrictions, and that they will inform all employees of the restrictions. If a violation of any leaf blower restriction under this ordinance is committed by an employee or agent of and while performing work for said commercial leaf blower operator, the commercial leaf blower operator shall be responsible for the violation and the employee or agent shall not be individually liable.

B. A commercial leaf blower operator shall ensure that its name, address, telephone number and its commercial leaf blower permit number are clearly visible on any vehicle it uses to conduct business in Newton.

C. In addition to the penalties set forth in sections (k) and (m) below, the permit of any commercial leaf blower operator who has received two or more notices of violation of leaf blower restrictions by it or its employees or agents in a 12-month period shall be suspended for a period of sixty days. The permit of any commercial leaf blower operator whose permit has been suspended two times shall be revoked, and the operator shall be ineligible for a permit for a period of one year. The operator's name shall be removed from the public list during any period of suspension or revocation. The penalty for operating a leaf blower without a commercial operator permit shall be \$300.00. The commissioner of inspectional services may promulgate rules and regulations to implement this section.

(i) *Permits for exemptions from this ordinance and for extensions of time to comply with this ordinance.*

(1) The mayor or his designee may grant a permit for any activity otherwise forbidden by the provisions of this ordinance upon a determination by the mayor or his designee that compliance in the conduct of such activity would cause undue hardship on the person or persons conducting such activity or on the community, taking into account: (i) the extent of noise pollution caused by not requiring such compliance; and (ii) whether reasonable efforts have been made to abate the noise. The mayor or his designee shall establish appropriate procedures for the processing of requests for such permits, including such hearings as the mayor or his designee deems appropriate. In granting any such permit, the mayor or his designee may impose such appropriate conditions as he deems necessary pursuant to this section. Copies of all such permits shall be filed with the clerk of the city council promptly after issuance. Promptly after issuance, copies of all such permits shall be filed with the clerk of the city council and to each ward city councilor for the affected ward.

(2) The mayor or his designee may extend to a specified date the time for compliance with this ordinance in the case of any particular activity with respect to which a determination is made that such extension is necessary to provide a reasonable opportunity for such activity to be brought into compliance. No such extension shall be granted which has the effect of exempting such activity from compliance with this ordinance. The mayor or his designee shall establish appropriate procedures for the processing

of requests for such extensions of time, including such hearings as the mayor or his designee deems appropriate.

(j) *Judicial Review.* Any person aggrieved by the grant or denial of a permit pursuant to subsection (i)(1) or an extension of time pursuant to subsection (i)(2), or a suspension or revocation of a commercial leaf blower operator permit pursuant to subsection (h)(7) may seek relief therefrom by a civil action in any court of competent jurisdiction as provided by the laws of the Commonwealth of Massachusetts.

(k) *Penalties.* Violation of any of the provisions of this section shall constitute a misdemeanor and any person, upon conviction of such violation, shall be fined an amount not to exceed three hundred dollars (\$300.00). Each day that such violation continues shall be considered to be a separate offense.

(l) *Enforcement.* The Newton Police Department and the Inspectional Services Department shall be responsible for enforcement of this ordinance. Each department shall document the disposition of all complaints by written report available to the public. The written report shall clearly indicate whether the complaint resulted in a warning or fine. If a warning or fine was not issued for a complaint, the responding city employee shall clearly indicate the reason.

(m) *Non-criminal disposition.* In addition to the penalties set forth in subsection (j), where non-criminal disposition of specified sections of this ordinance by civil fine has been provided for in sections 17-22 and 17-23 of the Revised Ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said violations may be enforced in the manner provided in such statute. The civil penalty for each such violation is set out in Sections 17-23(c) and 17-23(d).

(n) In the event the person in violation of section 20-13(h) pertaining to leaf blower use is a commercial leaf blower operator, the property owner shall be notified of the violation and of any warning or other enforcement issued to the operator.

Chapter 17, Sec. 17-23:

(c) DEPARTMENT OF INSPECTIONAL SERVICES: The commissioner of inspectional services, and/or his or her designee, and building inspectors of the department of inspectional services shall be authorized to issue written notice of the following violations:

Sec. 20-13. Noise Control, any section except Sec. 20-13 (h)(7)

- () First offense in calendar year..... Warning
- () Second offense in calendar year.....\$100.00
- () Third offense in calendar year.....\$200.00
- () Fourth or subsequent offense in calendar year \$300.00

Sec. 20-13 (h)(7) Restrictions on use of Leaf Blowers - Any violation

- () First offense Warning

() Second and subsequent offenses \$300.00

~~-\$300.00~~

(d) POLICE DEPARTMENT: City police officers shall be authorized to issue written notice of the following violations:

Sec. 20-13. Noise Control, any section except Sec. 20-13 (h) ~~(7)~~

() First offense in calendar year Warning

() Second offense in calendar year \$100.00

() Third offense in calendar year..... \$200.00

() Fourth or subsequent offense in calendar year \$300.00

Sec. 20-13 (h)~~(7)~~ Restrictions on use of Leaf Blowers - Any violation

() First offense Warning

() Second and subsequent offenses \$300.00