

PROPOSAL FOR CIVIL ENGINEERING SERVICES

March 2, 2023

Kenneth Buckland
Director of Planning & Community Development
Town of Wareham
54 Marion Road
Wareham, MA 02571

PROPOSAL NO: 22302-42
PROJECT: Peer Review
7 Depot Street
Wareham, MA

kbuckland@wareham.ma.us
508.291.3100

Dear Mr. Buckland:

Allen & Major Associates, Inc. (A&M) is pleased to submit this contract/proposal for civil engineering services to conduct a peer review of the application made to the Town of Wareham Zoning Board of Appeals for the applicant, MLC Homes, LLC. to assist the Zoning Board in rendering a decision on the application. The application was accompanied by a letter dated January 17, 2023 by Mr. Paul Turner, Director of Inspectional Services and a site plan prepared by Outback Engineering dated January 27, 2023.

The application is noted as Case 7-23 on the Board's website.

The project will include the following items:

1.0 Civil Engineering

- 1.1. Review of the Town of Wareham Zoning Bylaw revised April 12, 2022 with amendments through October 2022 Town Meeting, Planning Board Site plan Review Procedures, as applicable, and MassDEP Stormwater Management Standards.
- 1.2. Review of the application materials as provided to the Zoning Board of Appeals and any site plan drawings as prepared.
- 1.3. Review of any additional materials, if applicable, as submitted with the application.
- 1.4. Provide a written summary of findings and/or considerations to the Board of Appeals for their Review.
- 1.5. Perform one (1) round of follow up review if revisions to the site drawings are required.
- 1.6. Attendance at one (1) public hearing to present and discuss the findings with the Board, if desired by the Board.

If additional revisions to the site plans are required by the application, A&M shall provide an additional services addendum for additional review performed until the site plans address outstanding questions or has been otherwise approved by the Board. A&M's hourly rates are contained within the attached Standard Schedule of Fees and Conditions.

2.0 **Reimbursable Expenses**

Reimbursable expenses are all expenses incurred in conjunction with the performance of the work described, including but not limited to: police details, travel, overnight accommodations, parking, mileage, printing costs, copies of documents, traffic data collection, laboratory analysis, materials, and supplies, shipping, delivery service, and postage.

COMPENSATION

A&M will perform the Scope of Services contained in this agreement in accordance with the following fees:

	Task	Fee	Schedule	Payment Method
1.0	Civil Engineering	\$ 2,000.00	1 Week	Lump Sum
2.0	Reimbursable Expenses	\$ 150.00	As Needed	Allowance
	Total:	\$ 2,150.00		

A&M is prepared to commence work on this project immediately upon receipt of this executed proposal, and we anticipate substantial completion of Task 1.0 within one (1) week after receipt of the signed Client Authorization. A&M will notify the client in writing before exceeding any scope indicated as an allowance.

TERMS

1. The agreement is null and void unless executed by the Client and returned to A&M within five (5) days.
2. A&M's "Standard Schedule of Fees and Conditions" is hereby made a part of this Agreement.
3. A&M will be compensated for services requested by the Client which exceeds the scope of services outlined herein. Charges for any Additional Services will be invoiced per the attached "Standard Schedule of Fees and Conditions".
4. Invoicing of all services rendered under this contract/proposal will be made every thirty (30) days, and payment of services is expected within thirty (30) days of invoicing regardless of the stage of completion of the work. Accounts not paid within thirty (30) days of an invoice are subject to a finance charge of 1.5% per month, which is an annual rate of 18%.

Thank you for requesting this proposal; we look forward to working with you on this project. Should the conditions in this proposal and the enclosed "Standard Schedule of Fees and Conditions" meet with your approval, please sign the proposal and return it to our office.

This proposal and attached "Standard Schedule of Fees and Conditions" is hereby accepted by the Client as evidenced by the execution hereof and such a person so executing the same on behalf of the Client does hereby warrant full authority to act for, in the name of, and on behalf of the Client.

Such acceptance provides full authorization for A&M to proceed with providing the Scope of Services under the terms and conditions stated herein.

CLIENT AUTHORIZATION

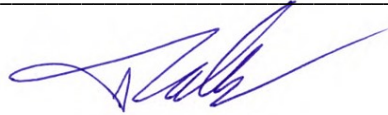
By: _____
Kenneth Buckland
Director of Planning &
Community Development

Date: _____

ALLEN & MAJOR ASSOCIATES, INC.

By:  _____
Phil Cordeiro, PE
Branch Manager

Date: March 2, 2023

By:  _____
Timothy J. Williams, PE
Principal

Date: March 2, 2023

STANDARD SCHEDULE OF FEES AND CONDITIONS

(Revised January 3, 2023)
Attachment to Proposal No.: 22302-42

Dated: March 2, 2023



Allen & Major Associates, Inc. (A&M) proposes to perform for CLIENT the services described in A&M's Scope of Services at a charge according to the Schedule of Fees below and under the conditions and circumstances as set forth herein. The CLIENT and A&M hereby agree as follows:

1. Contract: The Contract is the Proposal or Contract Document that is signed and dated by A&M and the CLIENT and to which this Standard Schedule of Fees and Conditions are appended by reference. Any documents not appended to this Contract, are expressly excluded from the Contract Documents and shall be of no force or effect.

2. Construction Consultation Services: If A&M's Construction Consultation services are included as part of the Scope of Services in the Contract, A&M will provide qualified personnel to observe and report on specific aspects or phases of construction upon the reasonable request of CLIENT. A&M's consultation services shall not include any supervision or direction of the actual work of the Contractor, its employees, or agents and the CLIENT shall so notify the Contractor. The Contractor shall be informed by the CLIENT that neither the presence of A&M's field representative nor the construction support by A&M shall excuse the Contractor for defects discovered in his work. Provided that all pertinent readings, observations, and reports on specific aspects or phases of construction are made by A&M's designated personnel without the necessity of reliance upon others, then A&M will make representations or limit such representations if it is not satisfied that the aspects or phases of construction comply with the criteria required of it. Unless otherwise agreed A&M's representation will be limited strictly to establishing compliance with specific technical requirements of the plans and specifications for which A&M is engaged and liable and does not extend to any other technical requirements or general provisions whether or not incorporated in the technical provisions by reference.

Additionally, A&M shall not be responsible or liable for any losses or damage incurred in connection with the contractor's use or administration of personnel, machinery, falsework, scaffolding, other temporary or precautionary construction, safety precautions or procedures, or compliance by the Contractor with the contract's general provisions. Consultation services provided by A&M are solely for the benefit of the CLIENT.

3. Construction Signage: CLIENT hereby consents to A&M placing a sign on the construction site indicating A&M's logo, contact information, and professional services offered by A&M.

4. Opinions of Probable Construction Cost: A&M may render opinions of probable construction costs to evaluate alternative measures considered as part of A&M's work. These opinions may also involve approximate quantity estimates. CLIENT understands and agrees that quantity estimates are not necessarily sufficiently accurate for construction bids. CLIENT acknowledges that A&M has no control over labor and material costs and an estimate of probable construction costs will be made based on A&M's experience. A&M does not guarantee or warrant the accuracy of estimates of probable construction costs.

5. Public Liability; Limit of Liability: A&M represents and warrants that its staff, and consultants employed by it, are protected by Workmen's Compensation Insurance; and that A&M has such Public Liability and Property Damage Insurance coverage which A&M deems to be adequate. A&M shall not be responsible or liable for any loss, damage, or liability arising from any loss, including but not limited to fire and explosion, beyond the amounts, limits, and conditions of such insurance, or for any loss, etc. excluded from the coverages of such insurance.

6. Insurance: A&M is protected by Professional Liability Insurance. Insurance certificates will be furnished to the CLIENT upon written request. A&M will not be responsible for any loss damage or liability beyond the amounts, limits, and conditions of such insurance or for any loss damage or liability arising from the CLIENT's negligent acts, errors, or omissions or for any person for whose conduct A&M is not legally responsible. By acceptance of this agreement, the CLIENT acknowledges the inherent risk associated with construction. The parties specifically agree that for any damage or cost resulting from any error or omission in the performance of A&M's services, its liability to all claimants shall be limited to \$50,000 or the amount paid by the CLIENT to A&M, whichever is greater.

If the CLIENT prefers not to limit A&M's professional liability to this sum, A&M will waive this limitation upon the CLIENT's written request and will agree to increase the limitation of our professional liability to \$100,000 or A&M's fee whichever is greater. The CLIENT's request for this option shall be made before the contract between the CLIENT and A&M is finalized.

7. Work Performed by Third Parties; Release: CLIENT and their heirs, successors, assigns and purchasers hereby indemnify and hold A&M harmless to the fullest extent possible from any and all suits, demands, claims, losses, causes of action including, without limitation, legal fees incurred by, or brought against A&M, in connection with, directly or indirectly, any work performed by A&M which is based upon plans, reports, research, documents or other materials provided by the CLIENT to A&M or performed by any third party if such, information, etc., contain mistakes, errors or other wrongful information, or under any other similar circumstances.

8. Right of Entry: CLIENT hereby grants to A&M, or represents and warrants (if the project location is not owned by CLIENT), that permission has been duly granted to A&M, its agents, staff, consultants, and any Contractors or Subcontractors for a Right of Entry, upon the project location to perform, and with the right to perform, all acts, studies, surveys, and research, including, without limitation, the making of test borings and other soil samplings, pursuant to the Scope of Services, together with any other services performed by A&M.

CLIENT hereby recognizes that the use of surveying and/or testing equipment may alter the terrain and affect vegetation on the property. CLIENT accepts that this may occur during A&M's work and will not hold A&M liable for such damage and hereby further indemnifies A&M against any claims or losses incurred as a result of any such alteration.

9. Standard of Care: A&M's services endeavor to be performed in accordance with generally accepted practices of engineers and land surveyors providing similar services at the same time, in the same locale, and under like circumstances. The CLIENT agrees that services provided will be rendered without any other warranty, expressed or implied and all such warranties have been expressly disclaimed by A&M and waived by the CLIENT.

10. Ownership of Documents: All documents produced by A&M under this Agreement shall remain the property of A&M and will not be used by the CLIENT for any other endeavor without the consent of A&M. CLIENT agrees to indemnify and hold harmless A&M from any claims that arise due to the reuse, or misuse of the work document.

11. Use of CLIENT Name: CLIENT hereby consents to A&M referencing the name of the CLIENT as a client of A&M in A&M's promotional and marketing material, both written and electronic.

12. Use of A&M's Logo: CLIENT agrees not to remove, alter or add to any logo of A&M nor will it co-logo its products and services without prior permission. The CLIENT is granted no right, title, or interest in any logo of A&M.

13. Electronic Files: "Hard copy" plans, specifications, and documents take precedence over electronic files. Electronic files, if issued, are for the CLIENT'S convenience only and shall be used at the CLIENT'S risk of misuse and/or misinterpretation. The CLIENT shall hold A&M harmless from any and all suits, demands, claims, losses, causes of action including, without limitation, legal fees incurred by or brought against A&M, in connection with any unauthorized use of electronic files and/or unauthorized changes to electronic files made by the CLIENT or others. CLIENT understands that electronic files are subject to data deterioration over time and understands that files in A&M's or the CLIENT'S possession may not be suitable for re-use due to deterioration after two months from the time of creation.

14. Billing/Payment: Invoices for A&M's services shall be submitted at A&M's option, either upon completion of such services or on a weekly, monthly, or another basis, mailed, sent electronically, or hand-delivered to CLIENT. All such invoices shall be payable upon receipt per the timeframe outlined in the base contract and shall, in the event that payment is not duly made, bear interest at the rate of 1.5 percent per month. CLIENT has the option to make payment by credit card. A service charge of 3% for credit card payments of amounts over \$2,000.00 will be applied to the specific invoice. It is further understood that if the CLIENT fails to pay any invoice when due, A&M may, without waiving any other obligations, claims, or rights against CLIENT terminate its obligations and performance hereunder. A&M shall not be liable for any damages or losses incurred by CLIENT as a result of said termination. If A&M places any invoice which is unpaid after the due date in the hands of an agency or an attorney for collection, CLIENT shall pay all costs and expenses of such collection, including reasonable attorney's fees and court costs.

15. Suspension and/or Termination of Services: If the CLIENT fails to make payments when due or otherwise is in breach of this Agreement, A&M may suspend the performance of services upon three (3) calendar days' notice to the CLIENT. Such suspension will not be a default or breach of the Contract. A&M shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension caused by any breach of this Agreement by the CLIENT. Upon payment in full by the CLIENT of all past due amounts and reimbursement expenses, A&M shall resume services under this Agreement, and the schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for A&M to resume performance. In addition to the rights and remedies in Section 14 above and this Section 15, this Agreement may be terminated by A&M for any reason, including but not limited to non-payment by the Client. In the event of termination, A&M shall be compensated by CLIENT for all services performed up to and including the termination date, including reimbursement expenses, and for the completion of such services and records necessary to place A&M's files in order and/or protect its professional reputation. A&M will only be obligated to provide its completed services documentation to the CLIENT if it has been compensated by the CLIENT in full for said services.

16. Changed Conditions: If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to A&M are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks, or other material terms of this Agreement, A&M may call for renegotiation of appropriate portions of this Agreement. A&M shall notify the CLIENT of the changed conditions necessitating renegotiation, and A&M and the CLIENT shall promptly and in good faith enter into a renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the termination provision hereof.

17. Additional Services: Additional services are those services requested by the CLIENT to be performed by A&M, but which are additional or extra to the services to be performed as part of the original scope of work. Such services are not included in the original scope of work and shall be invoiced and paid for separately. A&M shall have no obligation to provide Additional Services until a written approval, in a form satisfactory to A&M, has been received from the CLIENT, which approval shall not be unreasonably delayed, withheld, denied, or conditioned. All additional services once approved are subject to the terms, conditions, and fees stated herein.

18. Hazardous Materials: It is acknowledged by both parties that A&M's Scope of Services does not include any services related to asbestos or hazardous or toxic materials. In the event, A&M or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of A&M's services, A&M may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the CLIENT retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the job site is in full compliance with applicable laws and regulations.

The CLIENT agrees, notwithstanding any other provisions of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless A&M, his or her officers, partners, employees, agents, and consultants from and against any and all claims, suits, demands, liabilities, losses, or costs, including reasonable attorneys' fees and defense costs, resulting from or accruing to any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products, or materials that exist on, about or adjacent to the job site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action.

19. Confidentiality: A&M shall not divulge information regarding its services rendered to CLIENT to any party other than CLIENT or parties designated by CLIENT.

20. Expert and Witness Testimony: A&M's officers, employees, and agents shall not be called or retained as an expert witnesses by the CLIENT except by a separate written agreement, which includes the pricing outlined in the Schedule of Fees below. All amounts are to be paid in advance and as an addition to the amount of this contract. Further, should A&M's employees be called as a witness in any legal or court proceedings involving the CLIENT or the Project, then the CLIENT agrees to pay A&M's legal expenses, administrative costs, and fees pursuant to the Schedule of Fees, including but not limited to any and all time spent responding to a subpoena, attending depositions or court appearances.

21. Severability and Waiver: The partial or complete invalidity of one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

22. Massachusetts Contract: This Agreement is a Massachusetts contract and shall be interpreted and construed under the laws of the Commonwealth of Massachusetts. Any claim or dispute between the CLIENT and A&M shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator(s).

23. Placement Fee: To the fullest extent permissible at law, CLIENT shall not, without the prior written consent of A&M, solicit employment or hire any A&M partner, shareholder, employee, or contractor. In the event of a breach of the terms of this section which leads to the departure of an individual, the CLIENT shall pay A&M, on-demand, a placement fee equal to no less than thirty percent (30%) of the annual salary of the position to which the partner, shareholder, employee, or contractor was hired. The parties hereby acknowledge that this provision is a fair and reasonable term intended to be a genuine assessment of the likely loss to A&M attributable to the departure of any such individual.

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

In the event that A&M is obstructed or delayed in the completion of said services by any act beyond the control of A&M including, but not limited to, acts of God, inclement weather, illness, strikes, failure of equipment, unanticipated degree of difficulty encountered in performing said services, or delay created within or by approving agencies, then the time herein fixed for the completion of the services shall be extended for a period of time equivalent of the time lost by reason of any or all of the aforementioned causes.

25. Certificates, Certifications, Affidavits, or Assignments: The proposed language of certificates, certifications, affidavits, or assignments requested of A&M or A&M's consultants shall be submitted to A&M for review and approval at least fourteen (14) days prior to execution. A&M shall not sign any warranties or guarantees. The CLIENT shall not request affidavits, certificates, or certifications that would require expertise, knowledge, or services beyond the scope of this Agreement and/or the qualifications or competence of A&M.

26. Statutes of Repose and Limitation: All legal causes of action between the parties to this Agreement shall accrue and any applicable statutes of repose or limitation shall begin to run not later than the date of Substantial Completion. If the act or failure to act occurs after the date of Substantial Completion, then the date of final completion shall be used, but in no event shall any statute of repose or limitation begin to run any later than the date the Consultant's services are completed or terminated.

27. Responsibility: A&M's work shall not include determining, supervising, or implementing the means, methods, techniques, sequences, or procedures of construction. A&M shall not be responsible for evaluating, reporting, or affecting job conditions concerning health, safety, or welfare. A&M's work or failure to perform the same shall not in any way excuse any contractor, subcontractor, or supplier from the performance of its work in accordance with the contract documents. A&M has no right or duty to stop the contractor's work.

28. Attorney Fees: Should A&M employ an attorney to institute a suit, demand arbitration, take any action to enforce any of the terms and conditions stated herein, to protect A&M's interest in any manner arising under this Agreement, or to collect damages for breach of the Agreement, A&M shall be entitled to recover from the CLIENT reasonable attorney's fees, costs, charges, and expenses incurred or expended relating thereto.

29. Assignment: The CLIENT acknowledges that the services herein are unique and personal. Accordingly, the CLIENT may not assign its rights or delegate its duties or obligations under this Agreement. However, the CLIENT acknowledges that A&M shall be entitled to assign portions of the work set forth within the proposal as is necessary in order to meet the deadlines of the CLIENT and/or subcontract portions of its work out to subcontractors in order to accomplish same and to meet same deadlines.

30. Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors, or sub-consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

31. Schedule of Fees: (except where stated otherwise in a proposal)

Principal.....	\$200.00/Hour	2-Person Survey Crew	\$195.00/Hour
Senior Project Manager.....	\$160.00-\$180.00/Hour	3-Person Survey Crew	\$295.00/Hour
Project Manager.....	\$140.00-\$160.00/Hour	RTK/GPS Survey Crew	\$135.00/Hour
Sr. Project Engineer/Assistant Project Manager.....	\$130.00-\$140.00/Hour	Court Appearance/Expert Testimony	
Project Engineer/Landscape Architect	\$100.00-\$130.00/Hour	Preparation of Case and Court Appearance.....	\$250.00/Hour
Project Engineer-in-Training	\$90.00-\$130.00/Hour	Miscellaneous Reimbursable Expenses	
Survey Crew Chief.....	\$100.00/Hour	Mileage: Automobile	\$0.655/Mile
Survey Technician/CADD Technician.....	\$85.00-\$135.00/Hour	Survey Vehicle	\$0.975/Mile
Survey Crew Member.....	\$85.00-\$110.00/Hour	Outside Consultant Services	Cost Plus 10%
Project Designer.....	\$80.00-\$100.00/Hour	Out-of-Pocket Expenses	Cost Plus 10%
Project Coordinator/Administrative Staff.....	\$90.00/Hour	Permit Fees	Cost Plus 3%
Intern/Co-op.....	\$60.00/Hour		

All rates are subject to change on January 1, 2024. The above rates shall be charged for time spent as follows: the time required for traveling from A&M's office to the project site and return; the time required for working on the project; for survey crews, the charge will be as follows: 1-4 hours—charge as 4 hours; 4-8 hours—charge as 8 hours; and over 8 hours—charge as an exact number of hours. These rates are billed for both regular and overtime hours in all personnel categories. Out-of-pocket expenses such as travel and lodging expenses, meals, telephone calls, tolls, delivery services, police details, excavation contractors, printing, copies of documents, outside computer and plotting services, traffic data collection, laboratory analysis, etc. shall be charged in addition to the above and will be billed at cost plus 10%. All filing, advertising, sub-contractor, and permit fees will be paid directly by the CLIENT. If A&M is requested to provide these fees or any additional project-related fees, the CLIENT will be invoiced at cost plus an additional 3%.