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March 2, 2016

Amesbury Conservation Commission
Attn: Mr. Steve Langlois, Chairman
Amesbury Town Hall
62 Friend Street
Amesbury, Massachusetts 01913

**RE: Proposal to Provide Peer Review Wetland Consulting Services
NOI – Village at Bailey’s Pond peer review, Amesbury**

Dear Mr. Langlois and Amesbury Conservation Commission Members:

BSC Group, Inc. (BSC) is pleased to submit this proposal for wetland scientist peer review consulting services relative to the review of a Notice of Intent (NOI) filed for the proposed development of a 100 unit, 26 building residential development located on an approximately 26 acre site adjacent to Bailey’s Pond at the intersection of Route 150 and Summit Avenue in Amesbury, MA. This NOI filing represents a revised project plan. A 2004 NOI proposed 176 units, which, over a number of years, were reduced to 148 units, then to 136 units, and are now reduced to 100 units. Regulated wetland resources that have been identified on the site include Bordering Vegetated Wetland, Bank, Land Subject to Flooding, and Riverfront Area. BSC provided peer review services for the 136 unit proposal, and during the ensuing Massachusetts Department of Environmental Protection (DEP) appeal process. The DEP Superseding Order of Conditions (SOC) supported the position of the Amesbury Conservation Commission, and the Applicant has now submitted a revised NOI based on the results of the SOC.

BSC will attend a pre-review meeting, conduct a site visit, review the NOI application materials, as well as associated and relevant project documents from earlier proceedings, provide a letter report summarizing our findings and recommendations, attend two public meetings, and review one supplemental package of revisions, if provided by the applicant to the Commission. **Please note that this scope of services does not include verification of wetland resource boundaries, since these were reviewed previously.** Wetland resource area boundaries were approved through the Order of Conditions issued on July 2, 2013, and thus remain valid at this time.

1.0 SCOPE OF SERVICES - WETLANDS

BSC Group, Inc., the Company, proposes to provide to the Amesbury Conservation Commission (Commission), the Client, the following specific services in accordance with the attached Terms and Conditions and Fee Schedule which are made a part of this Agreement. BSC will review conditions on the site as represented in the NOI, on the site plans and as viewed by the Commission. Specifically, BSC proposes the following.

- Engineers
- Environmental Scientists
- Custom Software Developers
- Landscape Architects
- Planners
- Surveyors



- 1.1 **PRE-REVIEW MEETING:** BSC will attend a pre-review meeting at Town Hall with the applicant and representatives from applicable Town departments and boards such as the Conservation Commission and Planning Board. The intent of the meeting will be to discuss the submittals required by the applicant, the permitting schedule, and any significant concerns that BSC, the Town, and/or the applicant may have with regard to the permitting process and project review. A BSC senior wetland scientist will attend this meeting. We are assuming a 4-hour level of effort for this task.
- 1.2 **DOCUMENT REVIEW:** BSC will review NOI documents including the NOI report and forms, associated and relevant documents from earlier project proceedings, site plans and other background materials such as NRCS soils maps, NHESP maps, FEMA floodplain maps, and USGS topographic maps. The documents will be reviewed for conformance with the requirements of the Massachusetts Wetlands Protection Act (WPA) and associated regulations and the Amesbury Wetlands Ordinance (Ordinance) and associated regulations. **Please note that this scope of services does not include review of stormwater features or issues, as the stormwater review is being conducted by another consultant.**
- 1.3 **SITE VISIT:** The BSC wetland scientist will conduct a site investigation to review the proposed locations for work within buffer zones and wetland resource areas.
- 1.4 **LETTER REPORT:** BSC will prepare a Letter Report detailing our findings resulting from the document review, discussions with various parties, and the site visit. The report will include a description of any recommended changes (if necessary) to the NOI application and site plans. The report will summarize our review and provide a list of recommendations for the Conservation Commissions' consideration.
- 1.5 **COORDINATION:** BSC will coordinate with the Conservation Commission, as needed. At times, BSC will discuss issues and results of evaluations with the Conservation Commission and/or its agent. We have budgeted for 4-hours for coordination.
- 1.6 **MEETING ATTENDANCE:** BSC will attend two evening meetings of the Amesbury Conservation Commission and will present results of evaluations and recommendations summarized in the letter report prepared as part of Task 1.4 above. We are assuming a 4-hour level of effort per meeting for this task, so this task totals 8 hours.
- 1.7 **REVIEW SUPPLEMENTAL INFORMATION:** BSC will review one supplemental package of information provided in response to the letter report prepared in Task 1.4 above. An updated letter report will be prepared and provided to the Conservation Commission based on this review. The updated report will document the adequacy of the supplemental information provided to eliminate the deficiencies identified in the original report. For purposes of budget, it is assumed that the supplemental information required will be minimal



and a total of 5-hours has been included to review this information and update the letter report.

2.0 ADDITIONAL SERVICES

The following services are not included as a part of this Agreement. These services may become necessary based upon the conclusions derived from the performance of the proposed services. If required, these services will be performed for an additional fee to be paid on an hourly basis in accordance with the attached Fee Schedule.

- Attend additional Conservation Commission meetings beyond the three (3) included in Section 1.0 above.
- Conduct additional site visits and prepare additional associated reports other than those included in Section 1.0 above.
- Review additional or revised materials that may be required of the applicant subsequent to the review of supplemental information in Task 1.7 above. Should additional or revised materials be required and provided to BSC for review, this work will be provide as additional services and billed on a time and materials basis, consistent with the attached Fee Schedule.
- Flagging of wetland resources areas.
- Vernal Pool flagging and documentation for vernal pool certification.
- Engineering services.

3.0 ASSUMPTIONS

Costs are contingent upon BSC receiving all necessary materials in a timely manner.

4.0 ESTIMATED TIMETABLE FOR SERVICES/DELIVERABLES

BSC Group, Inc. proposes to begin the services identified in Section 1.0 of this Agreement upon receipt of written authorization to proceed from the Amesbury Conservation Commission, and on a schedule coordinated with the Amesbury Conservation Commission.

5.0 FEES FOR SERVICES

BSC Group, Inc. has assigned senior level staff to conduct the services herein. Gillian Davies has worked with the Commission previously, and has extensive experience conducting peer review services for Commissions. In addition, Gillian Davies conducts training for Commissioners through the MACC. Based on senior level rates, we have established a budget of **Five Thousand and One Hundred and Ten Dollars (\$5,110)**, including anticipated direct expenses for the services described in Section 1.0 of this Agreement and propose to provide these services in accordance with the costs listed below and the attached BSC Fee Schedule.

The Company shall inform the Client as soon as practical if it becomes necessary to exceed the overall budget in order to perform all proposed and additional services required. The



following tasks are estimates on a per task basis, however, some tasks may take more time and others less time, with costs adjusted accordingly.

Task 1.1: Pre-Review Meeting	\$ 520
Task 1.2: Document Review	\$ 650
Task 1.3: Site Visit	\$ 520
Task 1.4: Letter Report	\$ 910
Task 1.5: Coordination with Commission	\$ 520
Task 1.6: Public Hearing Attendance (2 meetings)	\$ 1040
Task 1.7: Review Supplemental Information	\$ 650
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Total Labor:	\$ 4,810
Reimbursable Expenses (mileage, copying):	\$ 300
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Total Cost:	\$ 5,110

6.0 GENERAL CONSIDERATIONS

- BSC will perform services in a timely manner, but it shall be agreed between the parties to this proposal that BSC cannot be responsible for delays occasioned by factors beyond its control, nor by unfavorable field conditions (such as significant flooding or heavy snow) nor by factors which could not reasonably have been foreseen at the time this proposal was prepared nor by the time an agreement is executed.
- During the performance of the services described within this proposal, the Scope of Services and compensation may be adjusted by mutually agreed upon Change Orders.
- Client understands that BSC's services are labor intensive. BSC typically bills clients monthly. Unless otherwise agreed in writing, payment of each BSC invoice is due on receipt and interest will accrue after 30 days. Client understands that BSC's services may be put on hold or terminated if invoices are not paid per this Agreement. It is the Client's responsibility to review invoices upon receipt. If there are any items which the Client wishes to discuss with BSC, it is the Client's responsibility to contact BSC to request clarification. In the absence of any such request from the Client within 30 days from the date when rendered, it is agreed that the amount invoiced is correct and shall be paid in full to BSC.
- This proposal is valid for thirty (30) days from the date of the proposal.

Please execute two (2) copies of this Agreement and return one (1) copy with an original signature for our records. BSC Group, Inc. welcomes the opportunity to continue to provide



services to the Amesbury Conservation Commission. Please feel free to call either Gillian Davies at 978-621-8783, or me at 617-896-4515 with any questions.

Sincerely,
BSC GROUP, INC.

Ingeborg Hegemann

Ingeborg Hegemann
Vice President

Funds for this project are available in Account _____.

AGREED AND ACCEPTED BY:

Sean Seyler

Authorized Signature

Title: Chairman

Date: 10/4/16

FEE SCHEDULE

August 1, 2015 - February 29, 2016

Rates are subject to change effective March 1, 2016

CLASSIFICATION	HOURLY RATE
Professional Staff	
Principal/Officer of Firm	\$200.00 to \$250.00
Managing: Engineer, Surveyor, Scientist, Landscape Architect, Planner	\$150.00 to \$190.00
Senior: Engineer, Surveyor, Scientist, Programmer, Landscape Architect, Designer, Planner	\$115.00 to \$160.00
Staff: Engineer, Surveyor, Scientist, Programmer, Landscape Architect, Designer, Planner	\$90.00 to \$120.00
Assistant: Engineer, Surveyor, Scientist, Programmer, Designer, Planner	\$65.00 to \$90.00
Expert Witness Testimony/Court Appearance	\$300.00 to \$350.00
Technical Support Staff	
Senior: Calculator, Chief of Party, Drafter, Instrument Operator, Technician, Text Processor	\$75.00 to \$110.00
Staff: Calculator, Drafter, Instrument Operator, Technician, Text Processor, Administration, Support	\$50.00 to \$90.00
Field Survey Party*	
Field Crew	\$140.00 to \$160.00*

Expenses

Direct expenses shall be billed at cost. Direct expenses include cost of transportation, delivery, printing and reprographics, telecommunications, presentation graphics, project supplies, subcontractors, subconsultants and other costs directly applicable to the individual project.

* Premium rates apply for overtime hours, night shifts and weekend work.

STATEMENT OF TERMS AND CONDITIONS

The terms and conditions set forth herein are incorporated, by reference, in the Proposal for Services, dated March 2, 2016, directed to Town of Amesbury Conservation Commission ("Client"). This Proposal contains clauses that limit Company's liability to Client and require Client to indemnify Company for some claims and damages. The Proposal should be reviewed carefully, and Client may choose to consult with an attorney. BSC Group, Inc., ("Company") and Client agree as follows:

Section 1. Services

Company shall provide Client with the "Services" set forth in the Proposal for Services ("Proposal") with respect to the property identified in the Proposal (the "Site"), under the terms and conditions set forth herein. Company's Services will be performed on behalf of and solely for the exclusive use of Client for the purposes set forth in the Proposal and for no other purpose. Client acknowledges that Company's Services require decisions which are based upon judgmental considerations stemming from limited data and time and budgetary constraints imposed by Client rather than upon scientific certainties. Client, in accepting Company's Proposal, acknowledges the inherent risks to Client and its property associated with the work described in the Proposal and with underground work in general. Company shall perform Services in accordance with generally accepted practices of like professionals undertaking similar services on behalf of any project or on behalf of similar projects in the same region.

Limitation of Services. Client agrees that such Services shall be rendered without any other warranty, express or implied, and, subject to all other limitations herein contained. Company shall be responsible only for such injury, loss or damage to the extent caused by the negligent acts, errors, omissions or willful misconduct of Company, its employees, or those for whom it is legally responsible.

- a) **Confidentiality of Services Rendered.** Company will not disclose information regarding the Proposal, Company's Services or its Report, except 1) to Client, or 2) parties designated by Client. Information which is in the public domain or which is provided to the Company by third parties is excepted from the foregoing undertaking.

Section 2. Billing and Payment

- a) Client will pay Company for Services performed in accordance with the rates and charges set forth in the Proposal. Invoices for Company's Services will be submitted on a periodic basis, or upon completion of Services, as Company shall elect. All invoices will be due and payable on receipt. Invoice balances remaining unpaid for thirty (30) days after invoice date will bear interest from invoice date at 1.5 percent per month or at the maximum lawful interest rate, if such lawful rate is less than 1.5 percent per month. If Client fails to pay any invoice in full within thirty (30) days after invoice date, Company may, at any time and without waiving any other rights or claims against Client and without thereby incurring any liability to Client, elect to terminate performance of Services upon ten (10) days prior written notice by Company to Client. Notwithstanding any termination of Services by Company for non-payment of invoices, or for reasons set forth in Section 9, Client shall pay Company in full for all Services rendered by Company to the date of termination of Services plus all interest, termination costs and expenses incurred by Company and related to such termination. Client shall be liable to reimburse Company for all costs and expenses of collection, including reasonable attorneys' fees. Company's non-exercise of any rights or remedies, whether specified herein or otherwise provided by law, shall not be deemed a waiver of any such rights or remedies, nor preclude Company from the exercise under this instrument, or at law.
- b) If the above described Services are discontinued for any reason other than those described in 2(a), all Services performed to date shall be compensated at the rates set forth in the Fee Schedule of the Proposal for Services.

Section 3. Insurance

Company represents that its staff is protected by Worker's Compensation insurance within statutory limits and that company has coverage under Public Liability and Property Damage insurance policies. Certificates for any such policies shall be provided to Client upon written request. In no event shall Company be liable or responsible for any loss, damage, or liability, including but not limited to fire and explosion beyond the amounts, limits, or conditions of such insurance. In addition, Company shall in no event be liable or responsible for any such loss, damage or liability excluded from coverage of insurance.

Section 4. Right of Entry

Client hereby grants to Company or represents and warrants (if the Site is not owned by Client) that permission has been duly granted for a Right of Entry from time to time, by Company, its agents, staff, consultants, and contractors or subcontractors, upon the Site for purpose of performing and with the right to perform all acts, studies, and research, including without limitation the making of test boring and other soil compilings, pursuant to the Scope of Services. Should Client not own the Site, Client warrants and represents by acceptance of the Proposal that it has authority and permission of Site Owner and any site occupant to grant Company this right of entry. Company may require evidence of such authority in a form reasonably satisfactory to Company.

Section 5. Subsurface Explorations

- a) **Normal Disturbance** – Client acknowledges that the use of exploration equipment may affect, alter or damage the terrain, vegetation and buildings, structures, improvements and equipment at, in or upon the Site. Client accepts the fact that this is inherent to Company's work and will not hold Company liable or responsible for any such reasonable effect, alteration, or damage, and will defend the Company and indemnify it against damage claimed by any party on account thereof. The costs of restoration of the Site because of any such damage has not been calculated nor included in Company's fees.
- b) **Subterranean Structures** – Company will exercise a reasonable degree of care in seeking to locate subterranean structures in the vicinity of proposed subsurface explorations at the Site. Company will contact public utilities and review plans, if any, provided by public utilities and public agencies and plans and information about the Site provided by Client. So long as Company observes such standard of care, Company will not be responsible for any damage, injury or interference with any subterranean structure, pipe, tank, telephone cables etc. or any other element or condition if not called to Company's attention prior to commencement of work or which is not shown, or accurately located, on any plans furnished to Company by Client or by any other party, public or private.

Section 6. Samples

Company will dispose of all soil, rock, water and other samples thirty (30) days after submission of Company's initial report. Client may request, in writing, that any such samples be retained beyond such date, and in such case Company will ship such samples to the location designated by Client, at Client's expense. Company may upon written request arrange for storage of samples at one of Company's offices, at mutually agreed storage charges. Company will not give Client prior notice of intention to dispose of samples.

Section 7. Construction Observation Services; Duties

- a) Construction Site Safety – Company, by entering into this Contract with Client does not undertake any liability or responsibility for the development, supervision, or enforcement of any job or site safety requirements; nor for any failure of any contractor, subcontractor, or other third person or entity, present on the Site to comply with the Occupational Safety and Health Act of 1970 (Federal OSHA), or with any regulations or standards promulgated thereunder, or with any state, county, or municipal law, regulations, or ordinance of similar import or intent.
- b) Company will not be responsible for any contractor's or subcontractor's compliance with the provisions of any contract nor for the observation or supervision of any contractor's or subcontractor's use of personnel, machinery, equipment, safety precautions or procedures.

Section 8. Documents

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents, data or information prepared by Company as instruments of Services, shall remain the sole property of Company. All reports and other work preparation by Company for Client shall be utilized solely for the intended purposes and Site described in the Proposal. Company will retain all pertinent documents for a period of three (3) years following the submission of Company's final report to Client. Such documents will be available to Client upon request at Company's office during office hours on reasonable notice, and copies will be furnished by Company to Client for the total cost of reproduction of the same.

Section 9. Unforeseen and Unanticipated Occurrences

If during performance of Services, any unforeseen conditions or occurrences are encountered which, in the judgment of Company, significantly affect or may affect the Services or the recommended scope of Services, Company will promptly notify Client thereof. Subsequent to that notification Client and Company agree to pursue one of the following options:

- a) The original scope of Services may be modified to the mutual satisfaction of the parties, and the estimate of charges, including budget estimates and fees, revised to include study of the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated herein;
- b) Company shall have the right to suspend its work immediately and terminate the work described in the Proposal, effective on the date specified by Company in writing. Client shall remain liable for and shall pay all fees and charges incurred under the provisions of the Proposal through the date of termination, notwithstanding Client and Company not having reached a new, mutually satisfactory, revision of their agreement.

Section 10. Public Responsibility

Client acknowledges that the Client or the Site owner as the case may be, is now and shall remain in control of the Site for all purposes at all times. Company does not undertake to report to any Federal, State, county or local public agencies having jurisdiction over the subject matter any conditions existing at the Site from time to time which may present a potential danger to public health, safety or the environment. Client, by acceptance of the Proposal, agrees that Client will timely notify each appropriate Federal, state, county and local public agency, as required by law, of the existence of any condition at the Site, which may present a potential danger to public health, safety or the environment.

Section 11. Hazardous Materials

Client agrees that Company has neither created nor contributed to the creation of any hazardous materials, pollutants, asbestos, or other potentially dangerous substance that is now or may be in the future discovered or introduced at the Site. Company hereby states, and Client acknowledges by acceptance of the Proposal, that Company may not have any professional liability or other coverage insuring Company for acts, errors and omissions, and Company may be unable to obtain such insurance at reasonable cost, for claims arising out of the performance of Services, including but not limited to, investigation, assessment or evaluation of hazardous materials or pollutants or the detection, abatement, removal or replacement or products, materials, or processes containing asbestos.

Section 12. Limitation of Professional Liability

- a) **Company Obligation for Successful Claim.** In recognition of the risks, rewards and benefits of the subject project available to the Client and the risks and total fee of the Company, the Company and the Client have agreed that the Company's total liability to the Client for any and all injuries, claims, losses, expenses or claims expenses, including claims by Client against Company for indemnification and/or contribution due to third party claims against Client, arising out of this agreement from any cause or causes shall not exceed the aggregate sum of \$50,000 or Company's aggregate fee for Services rendered on the subject project, whichever is lesser. Such causes include but are not limited to Company's alleged breach of contract, breach of warranty, strict liability, or negligent acts, errors or omissions.
- b) **Consequential Damages.** Under no circumstances shall Company be liable to Client for any consequential damages, including but not limited to loss of use or rental, loss of profit or cost of any financing however caused including Company's fault or negligence.
- c) **Client Obligation for Unsuccessful Claim.** In the event that Client makes a claim against Company, at law or otherwise for any alleged error, omission or act arising out of the performance of Company's Services, and Client fails to prove such claim upon final adjudication, then Client shall pay all costs incurred by Company in defending itself against the claim, including, without limitation, court costs, and other claim-related expenses, including, without limitation, costs, fees, and expenses of experts.

Section 13. Delays

In providing the referenced Services and absent any fault on the part of the Company, its employees or agents, the Company shall not be responsible for delays.

Section 14. Amendment of Agreement

These printed terms and conditions cannot be modified orally or by any course of conduct. Any modification must be acknowledged in writing by Company. These conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document issued by Client. Client shall not assign any aspect of the agreement between Client and Company except upon the prior written consent of Company.

Section 15. Choice of Laws/Jurisdiction

The agreement between Company and Client as set forth in the Proposal and in these Terms and Conditions shall be governed by and enforceable in accordance with the laws of the Commonwealth of Massachusetts. Any dispute resulting in legal action shall be adjudicated within the jurisdiction of the Commonwealth of Massachusetts.

Section 16. Severability

In the event that any provisions of this agreement shall be deemed invalid or unenforceable, the other provisions herein shall remain in force and effect and binding upon the parties hereto.