

STATEMENT OF TERMS AND CONDITIONS

The terms and conditions set forth herein are incorporated, by reference, in the Proposal for Services, dated January 17, 2013, directed to 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 any prospective Client. Client acknowledges that other qualified persons and entities are available to carry out the proposed Services.

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 as is caused by the sole negligence or willful misconduct of Company, its employees, agents or representatives.

- 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 by 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 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.