Nitsch Engineering

ter Plaza, Suite 430
on, MA 02108-1928
T: 617-338-0063
F: 617-338-6472
www.nitscheng.com

BREM056-09-05-2014

August 13, 2014

RECEIVED
SEP 05 2014
TOWN CLERK-CARLISLE
CHARLENE M. HINTON

Mr. Timothy D. Goddard
Town Administrator
Town Hall
66 Westford Street
Carlisle, MA 01741

RE: Nitsch Proposal #10399.P (Revised)
40B – Long Ridge Road
Civil and Traffic Peer Reviews
Civil Engineering Services
Carlisle, MA

Dear Mr. Goddard:

Nitsch Engineering is pleased to submit this revised proposal to you (the Client) for professional civil engineering services associated with the civil and traffic peer reviews of the submittal of a Comprehensive Permit Application for the 40B Long Ridge Road residential development, located off Long Ridge Road / Nowell Farme Road in Carlisle, Massachusetts.

The Long Ridge Road 40B project will be reviewed by Jennifer Johnson (Project Engineer) with oversight by Steven Ventresca (Project Manager) and Sandra Brock (Chief Engineer) as Principal-in-Charge. Mr. Ventresca and Ms. Brock have consulted with the Carlisle Planning Board on many projects in the Town of Carlisle (the Town) and are familiar with the personnel at Town Hall.

Review of the Site Plan and documentation will begin immediately once selected. Review of items is anticipated to occur within seven (7) business days with an initial letter to follow within 10 business days.

Nitsch Engineering will contract with GeoHydroCycle, Inc. (GHC) of Newton to assist with the septic system review. GHC will review the septic system for Title 5 compliance and review the proposed system related to wastewater discharge and the protection of groundwater onsite and abutter drinking wells. GHC will prepare a letter report of their findings and present their findings to the Zoning Board of Appeals (ZBA).

Based on existing documents, GHC understands that the proposed development will result in 61 bedrooms generating 6,710 gallons per day (gpd) under Title 5. Wastewater will be discharged to groundwater by way of three (3) community leach fields. Individual wells will be used to supply water for the proposed homes. Other homes abutting the site also have individual wells, which may be down gradient of the proposed leach fields.

GHC will conduct a review of the available project documents submitted to the Carlisle Boards, and summarize the findings and recommendations in a brief letter report to Nitsch Engineering. Mr. Stephen Smith of GHC will prepare and attend one (1) hearing to the BOH to present the result of the review.

Nitsch Engineering will review the plans for conformance with Standard Engineering Practice, the State's Stormwater Handbook, the Wetland's Protection Act, and Town's Rules and Regulations as applicable. Nitsch Engineering will provide the ZBA with a review in letter format indicating where the Applicant can provide improvements to the site plan and documentation of the project. Subsequent reviews will include initial and new comments including responses from the Applicant that will show the progress of the project and whether the Applicant has satisfied the original concerns. Nitsch Engineering will present concerns to the ZBA verbally and in written format. Meetings held with the Applicant outside the formal hearing process will be documented and provided to the ZBA. Nitsch Engineering recommends that a representative of the ZBA attend any meetings outside the formal hearings.

Nitsch Engineering will provide the following services for the 40B Long Ridge Road review.

SCOPE OF SERVICES

PHASE I: CIVIL REVIEW

Nitsch Engineering will provide professional civil engineering services to review the submission for the Comprehensive Permit, including:

1. Perform a site visit;
2. Perform a review of submission and prepare a letter report of Nitsch Engineering's initial comments regarding the Notice of Intent (NOI), landscaping, layout, grading, drainage, and other pertinent documents included in the 40B submission;
3. Perform a review of proposed wells relative to 310CMR 22 and the Town Water Supply Regulations;
4. Perform a review of the Sewage Disposal Plan relative to 310CMR 15;
5. Coordinate with GHC on their letter report of the proposed septic system discharges and influence on site and abutter drinking wells;
6. Perform a review of the revised plans and prepare an updated review letter report;
7. Review the site access and site building layout as it relates standard life and fire safety practices;
8. Be available to confer by telephone with Town officials and agents and the Development Team on matters within the Scope of Services set forth herein; and
9. Prepare or consult with the ZBA any technical Conditions of Approval for revisions as requested by the ZBA.

PHASE II: MEETINGS

Nitsch Engineering will attend meetings with the ZBA and the BOH. Nitsch Engineering will bill the meetings on a time and materials basis assuming four (4) hours for each meeting. Additional meeting times not listed in this phase will be billed under time and materials basis and as approved by the ZBA. Nitsch Engineering will attend the following meetings:

1. Attend one (1) meeting with the Applicant to review the initial and follow-up comment letters;
2. Attend up to two (2) ZBA meetings to discuss Nitsch Engineering's review letters;
3. Attend one (1) meeting with the Carlisle BOH; and
4. Attend one (1) meeting to discuss traffic with the ZBA.

PHASE III: TRAFFIC REVIEW

Nitsch Engineering will provide professional traffic engineering services to review the submission for the Comprehensive Permit, including:

1. Perform a site visit to observe site access and roadway adjacent to site;

SCOPE OF SERVICES – continued

2. Review and comment on the scope of the proposed Traffic Analysis provided by the project's proponent traffic engineer;

3. Review the Traffic Analysis;

4. Review the Site Plan, layout, and access/egress conditions in conjunction with the civil site review; and

5. Prepare a Memorandum Report of the traffic review findings.

PHASE IV: DEFINITIVE REVIEW (IF REQUESTED)

Review of the Definitive Plans to ensure compliance with the conditions of the ZBA. Nitsch Engineering will prepare a review letter based on compliance with the ZBA Conditions. This review is for both civil and traffic issues and will be applicable only if requested by the ZBA.

WORK NOT INCLUDED IN THE SCOPE OF SERVICES

1. Performing a property line survey, topographic survey, or other land surveying services.

2. Performing soil testing.

3. Performing 21E or any other environmental analysis or review.

ASSUMPTIONS

1. There will be one (1) revision of the report and plans. Further revisions may require additional services including attendance at additional meetings with the BOH or ZBA. Attendance at additional meetings will be billed at the current rates on a time and materials basis listed in the Standard Contract Terms attached to this revised proposal. Nitsch Engineering will submit a revised scope and fee if the site design is changed significantly.

2. Nitsch Engineering will perform only one (1) review of the Traffic Report.

3. The Client will provide copies of all applicable local site development regulations.

4. The Client will indemnify and hold harmless Nitsch Engineering and its officers, agents, and employees with regard to any errors or omissions within any document from which information was obtained, in whole or in part, and incorporated into documents prepared by Nitsch Engineering.

5. The Client will arrange for access to the project site for the site visit.

6. No State or Massachusetts Environmental Policy Act (MEPA) permitting review is included in this scope.

TIME AND MANNER

Nitsch Engineering is prepared to begin work immediately upon receipt of this executed revised proposal and the requested documents. Prior to initiation of Nitsch Engineering's services, a letter or other communication from the Town indicating the funds have been appropriated or received for Nitsch Engineering's peer review is required. Nitsch Engineering will perform the initial review and prepare the initial review letter four (4) weeks after the documents are provided by the Client. Timing of completion of tasks can be determined once the task commences.

COMPENSATION

Compensation for the services provided will be in accordance with Nitsch Engineering's Standard Contract Terms as attached. The lump-sum costs for these services are as follows:

Phase I: Civil Review	$ 5,300.00
Phase II: GHC	3,000.00
Phase III: Traffic Review	1,500.00
Phase IV: Definitive Review	2,500.00
TOTAL	$12,300.00

The estimated cost for the meeting services are as follows:

Phase II: Meetings	$3,400.00

The total cost for the lump-sum and estimated services to review this project is $15,700.

Labor costs will not be incurred by Nitsch Engineering beyond this lump-sum or estimated costs without verbal approval from the Client. All expenses (i.e., prints, postage, delivery service, mileage, regulations, etc.) are included in the lump-sum fee. Payment will be due 20 days after receipt of the invoice.

ADDITIONAL SERVICES

Nitsch Engineering will be compensated for services requested by the Client that exceed the "SCOPE OF SERVICES" outlined herein. Charges for any Additional Services will be billed in accordance with the attached Standard Contract Terms or the Standard Contract Terms in effect at the time the services are provided. Additional Services will not be accomplished unless Nitsch Engineering has verbal approval.

METHOD OF PAYMENT

Costs incurred on this project will be billed monthly on a lump-sum basis as outlined in the attached Standard Contract Terms. Payment will be due 10 days after receipt of the invoice.

A retainer will not be required for this contract.

TERMINATION

Nitsch Engineering reserves the right to revise this revised proposal should the signed copy not be received by September 12, 2014. This agreement may be terminated by either party upon seven (7) 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. If this agreement is terminated by the Client, Nitsch Engineering will be paid for services rendered on the basis of services performed.

If Nitsch Engineering is authorized to commence and/or continue providing its services on the project, either verbally or in writing, prior to the full execution of a written contract, such authorization will be deemed an acceptance of this revised proposal, and such services will be provided and compensated for in accordance with the terms and conditions contained herein as though this revised proposal were fully executed by the Client.

Thank you for requesting this revised proposal. We look forward to working with you on this project. Should the conditions in this revised proposal and the enclosed Standard Contract Terms meet with your approval, please sign and return both the "File Copy" of this revised proposal and the Standard Contract Terms to us for our files.

If you have any questions, please call.

Very truly yours,

Nitsch Engineering, Inc.

SAB for

Steven Ventresca, PE, LEED AP BD+C
Project Manager

Approved by:

SAB

Sandra A. Brock, PE, CFM®, LEED AP BD+C
Chief Engineer

SV/fmk

Enclosures: Standard Contract Terms
"File Copy" of this revised proposal and Standard Contract Terms

Q:\10399 40B Nowell Farm\Contract\10399-R-PR-40B Long Ridge Rd 2014-08-12.docx

CLIENT AUTHORIZATION

This revised proposal and Standard Contract Terms are 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 Nitsch Engineering to proceed with providing the Scope of Services under the terms and conditions stated herein.

Timothy Goddard
Signature

8/20/14
Date

TIMOTHY D. GODDARD
Printed Name and Title TOWN ADM.

I certify that the Town has appropriated funds for these services.

Town Treasurer (Signature)

9/4/2014
Date

M. Laurie Barto
Printed Name and Title TREASURER

Nitsch Engineering

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STANDARD CONTRACT TERMS

Proposal #10399.P **Date: August 13, 2014**

The following Standard Contract Terms, together with the attached proposal, constitutes the terms of the Agreement between Nitsch Engineering, Inc. and the Client with respect to the performance of civil engineering services on the project.

1. SCOPE OF SERVICES

Nitsch Engineering, as representative of the Client, shall perform the engineering services described in the attached proposal.

If Nitsch Engineering's services include the performance of any service during the construction phase of the project, it is understood that the purpose of any such services (including any visits to the site) will be to enable Nitsch Engineering to better perform the duties and responsibilities assigned to and undertaken by it as an experienced and qualified design professional, and to provide the Client with a greater degree of confidence that the completed work of the contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the contractor(s). Nitsch Engineering shall not, during such visits or as a result of any observations of construction, supervise, direct, or have control over the contractor's(s') work nor shall Nitsch Engineering have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by the contractor(s) or safety precautions and programs incident to the work of the contractor(s) or for any failure of the contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to the contractor(s) furnishing and performing their work. Nitsch Engineering does not guarantee the performance of the construction contract by the contractor(s), and does not assume responsibility for the contractor's(s') failure to furnish and perform their work in accordance with the Contract Documents.

Nitsch Engineering shall review and approve (or take other appropriate action with respect to) shop drawings, samples, and other data which the contractor(s) is (are) required to submit, but only for conformance with the design concept of the project and compliance with the information given in the Contract Documents. Such review and approvals or other actions shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Nitsch Engineering's review or other actions, as described above, shall not constitute approval of an assembly of which an item is a component, nor shall it relieve the contractor(s) of (a) their obligations regarding review and approval of any such submittals; and (b) their exclusive responsibility for the means, methods, sequences, techniques, and procedures of construction, including safety of construction. Nitsch Engineering shall be entitled to rely upon the accuracy and completeness of surveys, reports, drawings, plans and other documents prepared by third parties, including consultants and contractors independently retained by the Client.

2. STANDARD OF CARE

Client acknowledges that the Services provided for in this Agreement may require Nitsch Engineering to make decisions based on experience and engineering judgment, rather than on precise scientific or empirical criteria. Nitsch Engineering shall endeavor to perform the Services to be under this Agreement in a manner consistent with that level of care and skill ordinarily exercised by other professional engineers performing such Services within the limits prescribed by the Client or set forth in the Proposal, at the same time, in the same locality at the site, and under the same or similar circumstances and conditions.

3. CERTIFICATIONS/ASSIGNMENT

The proposed language of certificates, affidavits or certifications requested of Nitsch Engineering or Nitsch Engineering's consultants shall be submitted to Nitsch Engineering for review and approval at least 14 days prior to execution. The Client shall not request certifications and/or affidavits that would require knowledge or services beyond the scope of this Agreement and/or beyond the professional qualifications and engineering expertise of Nitsch Engineering.

4. PAYMENT AND TERMS; SUSPENSION OF SERVICES

Invoices are sent to clients around the 30th of each month for the prior month and payment is due within 10 calendar days of the invoice date. If payment is not made within 30 calendar days of the invoice date, the amounts due shall include an interest assessment at the rate of 1-1/2% per month commencing on the 30th day. If the Client fails to make payment when due Nitsch Engineering for services and reimbursable expenses, Nitsch Engineering may, upon seven days' written notice to Client, suspend performance of services under this Agreement. Unless payment in full is received by Nitsch Engineering within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, Nitsch Engineering shall have no liability to the Client for delay or damage caused the Client because of such suspension of services.

5. RESTART

If the project is stopped for a period greater than 60 days, a restart fee of 10% of the project fee will be required to compensate us for the necessary premium time and remobilization of staff and materials. Depending on the duration of the stoppage, an additional adjustment may be necessary to cover wage increases and general escalation.

6. TERMINATION

This Agreement may be terminated either by the Client or by Nitsch Engineering upon seven (7) days' written notice. In either case, all amounts for services and reimbursable expenses due as of the date of receipt of cancellation notice shall be paid to Nitsch Engineering within 30 days from the date of Nitsch Engineering's final invoice following notice of termination.

7. WAIVER OF SUBROGATION

The Client and Nitsch Engineering waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, but only to the extent covered by any property or other insurance. The Client and Nitsch Engineering shall each require similar waivers from their contractors, consultants, and agents.

8. INSURANCE

Nitsch Engineering is protected by Workers Compensation Insurance and Professional Liability Insurance, and will furnish information and certificates upon request.

9. TRANSFER/REASSIGNMENT OF AGREEMENT

This Agreement cannot be transferred or reassigned to any other entity without the prior written authorization of Nitsch Engineering.

10. LIMITATION OF LIABILITY

The Client agrees to limit Nitsch Engineering's liability to the Client for or on account of all claims and/or damages of any nature whatsoever caused by or arising out of Nitsch Engineering's performance of its services, such that the total aggregate liability of Nitsch Engineering for any and all claims and/or damages of any nature whatsoever, arising out of the performance of Nitsch Engineering's services on the project, shall not exceed $50,000 or Nitsch Engineering's total fee for services rendered on the project; whichever is greater.

11. HAZARDOUS WASTE/ASBESTOS/CONTAMINANTS

Nitsch Engineering shall not be responsible for the discovery of, treatment of, disposal of, permitting for, or any services involving or relating to the presence of or the actual or threatened release, escape, or discharge of hazardous waste, asbestos, and/or other contaminants which may exist on the site, in any of the existing structures on the site, or due to the proposed development. It is agreed that the Client, to the fullest extent permitted by law, shall release and indemnify and hold harmless Nitsch Engineering and its consultants, agents, and employees, from and against all claims, damages, losses, and expenses, direct and indirect, including but not limited to attorney's fees and defense costs, arising out of or resulting from the performance of any services by Nitsch Engineering, or claims against Nitsch Engineering related to, involving, or arising out of hazardous waste, asbestos, or other contaminants.

12. OWNERSHIP AND USE OF DOCUMENTS

All documents including drawings and specifications prepared or furnished by Nitsch Engineering under this Agreement are instruments of service with respect to the project. Nitsch Engineering shall retain the ownership and property interest in those instruments of service whether or not the project is completed; however, if the project is completed, the Client may retain copies solely for information and record reference purposes in connection with the completed project. These documents are not intended or represented to be suitable for reuse by Client or others in connection with (a) the completion of the project if Nitsch Engineering's Agreement has been terminated or Nitsch Engineering otherwise is not involved in the project; (b) extensions of the project; and/or (c) any other project. Any reuse without written verification or adaptation by Nitsch Engineering for the specific purpose intended will be at the Client's sole risk and without any liability or legal exposure to engineer or its consultants. The Client shall indemnify and hold harmless Nitsch Engineering, and its consultants, from any and all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Nitsch Engineering to further compensation at rates to be agreed upon by the Client and Nitsch Engineering.

Further, Nitsch Engineering agrees to provide materials to the Client stored electronically. The Client recognizes that data, plans, specifications, reports, documents, or other information recorded on or transmitted as electronic media ("CADD Documents") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the CADD Documents provided to the Client are for informational purposes only and not as an end product. Nitsch Engineering makes no warranties, either express or implied, regarding the fitness or suitability of the CADD Documents. Accordingly, the Client agrees to waive any and all claims against Nitsch Engineering resulting in any way from the unauthorized reuse or alteration of the CADD Documents.

13. ESTIMATES AND/OR OPINIONS OF COST

Any estimates or opinions of project or construction costs are provided by Nitsch Engineering on the basis of Nitsch Engineering's experience and qualifications as an engineer and represent its best judgment as an experienced and qualified engineer familiar with the construction industry. Since Nitsch Engineering has no control over the cost of labor, materials, equipment, or services furnished by others or over competitive bidding or market conditions, it cannot guarantee that proposals, bids, or actual project costs or construction costs will not vary from any estimates or opinions of costs prepared by Nitsch Engineering. Similarly, since Nitsch Engineering has no control over building or site operation and/or maintenance costs, Nitsch Engineering cannot and does not guarantee that the actual building or system operating or maintenance costs will not vary from any estimates given by Nitsch Engineering.

14. SERVICES MADE NECESSARY BY LACK OF CONTRACTOR PERFORMANCE; INDEMNIFICATION

It is the Client's responsibility to hire the contractor, and it is the contractor's responsibility to install and complete fully operable systems. The Client agrees to pay Nitsch Engineering at the rates listed in Items 14 and 15 below for all its troubleshooting work due to contractor's inability to achieve satisfactory operation.

Client shall hold harmless, defend and indemnify Nitsch Engineering, its officers, agents, employees, and consultants, from any and all liabilities, claims, damages, and suits arising out of the negligence of the Client or its agents, or liability due to the negligence of any contractor(s) performing any portion of the work and supplying any materials, or any other parties, except for any liability of Nitsch Engineering, or its consultants due to the sole negligence of Nitsch Engineering, or its consultants.

15. EFFECTIVE DATE

This Agreement will become effective upon Nitsch Engineering's receipt of authorization to proceed. This proposal is subject to renegotiation if acceptance is not received within 30 days or as stated in the proposal.

16. SCHEDULE OF FEES (except where stated otherwise in proposal):

Unless stated otherwise in proposal, Nitsch Engineering's hourly rates are as follows:

a.	Principal	$280.00/hour
b.	Expert Witness	300.00/hour
c.	Senior Project Manager	185.00/hour
d.	Project Manager	155.00/hour
e.	Survey Project Manager	150.00/hour
f.	Senior Project/Traffic Engineer	135.00/hour
g.	Project/Traffic Engineer	125.00/hour
h.	Senior Transportation/Project Designer	110.00/hour
i.	Transportation/Project Designer	100.00/hour
j.	Survey Technician	95.00/hour
k.	Senior CAD Operator	90.00/hour
l.	GIS Manager	120.00/hour
m.	CAD Operator	77.00/hour
n.	Two-Person Field Crew	176.00/hour
o.	Crew Chief	98.00/hour
p.	Instrument Operator	78.00/hour
q.	Administrative	55.00/hour
r.	Outside Consultant Services	Cost plus 10%
s.	Mileage	Charged at the IRS approved rate

These rates are valid through September 27, 2014, and are then subject to adjustment.

Collection: If the Client fails to pay fees due for services rendered, the Client agrees to pay all costs of collection, including, but not limited to, any reasonable attorney costs.

17. REIMBURSABLE EXPENSES

Normal reimbursable expenses are in addition to the fee for services and shall be billed at 1.10 times the amount expended. Reimbursable expenses include all expenses associated with the project such as travel including tolls, parking, transportation, meals, and lodging; printing, copying and handling of documents; film and processing; regulations and by-laws/ordinances; telephone calls and other communication charges; postage and delivery; equipment for tests; and permit application fees.

18. THIRD PARTIES

Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Client and Nitsch Engineering.

19. APPLICABLE STATE LAW

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

20. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

Neither party, nor their parent, affiliated or subsidiary companies, nor the officers, directors, employees or agents of any of the forgoing, shall be liable to the other in any action or claim brought by either party against the other for incidental, indirect, or consequential damages arising out of or related to the Services whether based on contract, tort, statute or otherwise.

21. MEDIATION

Prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes, or controversies arising out of, or in relation to the interpretation, application, or enforcement of this Agreement to mediation. Mediation shall be conducted under the auspices of the American Arbitration Association in accordance with its existing terms and procedures. The cost of mediation shall be borne equally by the parties. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this Agreement and the American Arbitration Association. This Article shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such a claim or dispute under the laws of the Commonwealth of Massachusetts.

ACCEPTED: _____ DATE: 8/29/14
Signature

TIMOTHY D. GODDARD, TOWN ADM.
Printed name and title

Revised: September 16, 2013

Nitsch Engineering

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STANDARD CONTRACT TERMS

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1. SCOPE OF SERVICES

Nitsch Engineering, as representative of the Client, shall perform the engineering services described in the attached proposal.

If Nitsch Engineering's services include the performance of any service during the construction phase of the project, it is understood that the purpose of any such services (including any visits to the site) will be to enable Nitsch Engineering to better perform the duties and responsibilities assigned to and undertaken by it as an experienced and qualified design professional, and to provide the Client with a greater degree of confidence that the completed work of the contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the contractor(s). Nitsch Engineering shall not, during such visits or as a result of any observations of construction, supervise, direct, or have control over the contractor's(s') work nor shall Nitsch Engineering have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by the contractor(s) or safety precautions and programs incident to the work of the contractor(s) or for any failure of the contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to the contractor(s) furnishing and performing their work. Nitsch Engineering does not guarantee the performance of the construction contract by the contractor(s), and does not assume responsibility for the contractor's(s') failure to furnish and perform their work in accordance with the Contract Documents.

Nitsch Engineering shall review and approve (or take other appropriate action with respect to) shop drawings, samples, and other data which the contractor(s) is (are) required to submit, but only for conformance with the design concept of the project and compliance with the information given in the Contract Documents. Such review and approvals or other actions shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto. Nitsch Engineering's review or other actions, as described above, shall not constitute approval of an assembly of which an item is a component, nor shall it relieve the contractor(s) of (a) their obligations regarding review and approval of any such submittals; and (b) their exclusive responsibility for the means, methods, sequences, techniques, and procedures of construction, including safety of construction. Nitsch Engineering shall be entitled to rely upon the accuracy and completeness of surveys, reports, drawings, plans and other documents prepared by third parties, including consultants and contractors independently retained by the Client.

2. STANDARD OF CARE

Client acknowledges that the Services provided for in this Agreement may require Nitsch Engineering to make decisions based on experience and engineering judgment, rather than on precise scientific or empirical criteria. Nitsch Engineering shall endeavor to perform the Services to be under this Agreement in a manner consistent with that level of care and skill ordinarily exercised by other professional engineers performing such Services within the limits prescribed by the Client or set forth in the Proposal, at the same time, in the same locality at the site, and under the same or similar circumstances and conditions.

3. CERTIFICATIONS/ASSIGNMENT

The proposed language of certificates, affidavits or certifications requested of Nitsch Engineering or Nitsch Engineering's consultants shall be submitted to Nitsch Engineering for review and approval at least 14 days prior to execution. The Client shall not request certifications and/or affidavits that would require knowledge or services beyond the scope of this Agreement and/or beyond the professional qualifications and engineering expertise of Nitsch Engineering.

4. PAYMENT AND TERMS; SUSPENSION OF SERVICES

Invoices are sent to clients around the 30th of each month for the prior month and payment is due within 10 calendar days of the invoice date. If payment is not made within 30 calendar days of the invoice date, the amounts due shall include an interest assessment at the rate of 1-1/2% per month commencing on the 30th day. If the Client fails to make payment when due Nitsch Engineering for services and reimbursable expenses, Nitsch Engineering may, upon seven days' written notice to Client, suspend performance of services under this Agreement. Unless payment in full is received by Nitsch Engineering within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, Nitsch Engineering shall have no liability to the Client for delay or damage caused the Client because of such suspension of services.

5. RESTART

If the project is stopped for a period greater than 60 days, a restart fee of 10% of the project fee will be required to compensate us for the necessary premium time and remobilization of staff and materials. Depending on the duration of the stoppage, an additional adjustment may be necessary to cover wage increases and general escalation.

6. TERMINATION

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7. WAIVER OF SUBROGATION

The Client and Nitsch Engineering waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, but only to the extent covered by any property or other insurance. The Client and Nitsch Engineering shall each require similar waivers from their contractors, consultants, and agents.

8. INSURANCE

Nitsch Engineering is protected by Workers Compensation Insurance and Professional Liability Insurance, and will furnish information and certificates upon request.

9. TRANSFER/REASSIGNMENT OF AGREEMENT

This Agreement cannot be transferred or reassigned to any other entity without the prior written authorization of Nitsch Engineering.

10. LIMITATION OF LIABILITY

The Client agrees to limit Nitsch Engineering's liability to the Client for or on account of all claims and/or damages of any nature whatsoever caused by or arising out of Nitsch Engineering's performance of its services, such that the total aggregate liability of Nitsch Engineering for any and all claims and/or damages of any nature whatsoever, arising out of the performance of Nitsch Engineering's services on the project, shall not exceed $50,000 or Nitsch Engineering's total fee for services rendered on the project; whichever is greater.

11. HAZARDOUS WASTE/ASBESTOS/CONTAMINANTS

Nitsch Engineering shall not be responsible for the discovery of, treatment of, disposal of, permitting for, or any services involving or relating to the presence of or the actual or threatened release, escape, or discharge of hazardous waste, asbestos, and/or other contaminants which may exist on the site, in any of the existing structures on the site, or due to the proposed development. It is agreed that the Client, to the fullest extent permitted by law, shall release and indemnify and hold harmless Nitsch Engineering and its consultants, agents, and employees, from and against all claims, damages, losses, and expenses, direct and indirect, including but not limited to attorney's fees and defense costs, arising out of or resulting from the performance of any services by Nitsch Engineering, or claims against Nitsch Engineering related to, involving, or arising out of hazardous waste, asbestos, or other contaminants.

12. OWNERSHIP AND USE OF DOCUMENTS

All documents including drawings and specifications prepared or furnished by Nitsch Engineering under this Agreement are instruments of service with respect to the project. Nitsch Engineering shall retain the ownership and property interest in those instruments of service whether or not the project is completed; however, if the project is completed, the Client may retain copies solely for information and record reference purposes in connection with the completed project. These documents are not intended or represented to be suitable for reuse by Client or others in connection with (a) the completion of the project if Nitsch Engineering's Agreement has been terminated or Nitsch Engineering otherwise is not involved in the project; (b) extensions of the project; and/or (c) any other project. Any reuse without written verification or adaptation by Nitsch Engineering for the specific purpose intended will be at the Client's sole risk and without any liability or legal exposure to engineer or its consultants. The Client shall indemnify and hold harmless Nitsch Engineering, and its consultants, from any and all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Nitsch Engineering to further compensation at rates to be agreed upon by the Client and Nitsch Engineering.

Further, Nitsch Engineering agrees to provide materials to the Client stored electronically. The Client recognizes that data, plans, specifications, reports, documents, or other information recorded on or transmitted as electronic media ("CADD Documents") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the CADD Documents provided to the Client are for informational purposes only and not as an end product. Nitsch Engineering makes no warranties, either express or implied, regarding the fitness or suitability of the CADD Documents. Accordingly, the Client agrees to waive any and all claims against Nitsch Engineering resulting in any way from the unauthorized reuse or alteration of the CADD Documents.

13. ESTIMATES AND/OR OPINIONS OF COST

Any estimates or opinions of project or construction costs are provided by Nitsch Engineering on the basis of Nitsch Engineering's experience and qualifications as an engineer and represent its best judgment as an experienced and qualified engineer familiar with the construction industry. Since Nitsch Engineering has no control over the cost of labor, materials, equipment, or services furnished by others or over competitive bidding or market conditions, it cannot guarantee that proposals, bids, or actual project costs or construction costs will not vary from any estimates or opinions of costs prepared by Nitsch Engineering. Similarly, since Nitsch Engineering has no control over building or site operation and/or maintenance costs, Nitsch Engineering cannot and does not guarantee that the actual building or system operating or maintenance costs will not vary from any estimates given by Nitsch Engineering.

14. SERVICES MADE NECESSARY BY LACK OF CONTRACTOR PERFORMANCE; INDEMNIFICATION

It is the Client's responsibility to hire the contractor, and it is the contractor's responsibility to install and complete fully operable systems. The Client agrees to pay Nitsch Engineering at the rates listed in Items 14 and 15 below for all its troubleshooting work due to contractor's inability to achieve satisfactory operation.

Client shall hold harmless, defend and indemnify Nitsch Engineering, its officers, agents, employees, and consultants, from any and all liabilities, claims, damages, and suits arising out of the negligence of the Client or its agents, or liability due to the negligence of any contractor(s) performing any portion of the work and supplying any materials, or any other parties, except for any liability of Nitsch Engineering, or its consultants due to the sole negligence of Nitsch Engineering, or its consultants.

15. EFFECTIVE DATE

This Agreement will become effective upon Nitsch Engineering's receipt of authorization to proceed. This proposal is subject to renegotiation if acceptance is not received within 30 days or as stated in the proposal.

16. SCHEDULE OF FEES (except where stated otherwise in proposal):

Unless stated otherwise in proposal, Nitsch Engineering's hourly rates are as follows:

a.	Principal	$280.00/hour
b.	Expert Witness	300.00/hour
c.	Senior Project Manager	185.00/hour
d.	Project Manager	155.00/hour
e.	Survey Project Manager	150.00/hour
f.	Senior Project/Traffic Engineer	135.00/hour
g.	Project/Traffic Engineer	125.00/hour
h.	Senior Transportation/Project Designer	110.00/hour
i.	Transportation/Project Designer	100.00/hour
j.	Survey Technician	95.00/hour
k.	Senior CAD Operator	90.00/hour
l.	GIS Manager	120.00/hour
m.	CAD Operator	77.00/hour
n.	Two-Person Field Crew	176.00/hour
o.	Crew Chief	98.00/hour
p.	Instrument Operator	78.00/hour
q.	Administrative	55.00/hour
r.	Outside Consultant Services	Cost plus 10%
s.	Mileage	Charged at the IRS approved rate

These rates are valid through September 27, 2014, and are then subject to adjustment.

Collection: If the Client fails to pay fees due for services rendered, the Client agrees to pay all costs of collection, including, but not limited to, any reasonable attorney costs.

17. REIMBURSABLE EXPENSES

Normal reimbursable expenses are in addition to the fee for services and shall be billed at 1.10 times the amount expended. Reimbursable expenses include all expenses associated with the project such as travel including tolls, parking, transportation, meals, and lodging; printing, copying and handling of documents; film and processing; regulations and by-laws/ordinances; telephone calls and other communication charges; postage and delivery; equipment for tests; and permit application fees.

18. THIRD PARTIES

Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Client and Nitsch Engineering.

19. APPLICABLE STATE LAW

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

20. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

Neither party, nor their parent, affiliated or subsidiary companies, nor the officers, directors, employees or agents of any of the forgoing, shall be liable to the other in any action or claim brought by either party against the other for incidental, indirect, or consequential damages arising out of or related to the Services whether based on contract, tort, statute or otherwise.

21. MEDIATION

Prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes, or controversies arising out of, or in relation to the interpretation, application, or enforcement of this Agreement to mediation. Mediation shall be conducted under the auspices of the American Arbitration Association in accordance with its existing terms and procedures. The cost of mediation shall be borne equally by the parties. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this Agreement and the American Arbitration Association. This Article shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such a claim or dispute under the laws of the Commonwealth of Massachusetts.

ACCEPTED: _____ DATE: 8/24/14
Signature

TIMOTHY D. GODDARD, TOWN ADM.
Printed name and title

Revised: September 16, 2013