

July 18, 2016

Mr. Hans Jensen  
Strategic Planning and Community Development  
City of Somerville  
93 Highland Avenue  
Somerville, MA 02143

RE: Peer Review Services  
343-349 and 351 Summer Street  
Somerville, Massachusetts 02143

Dear Mr. Jensen:

Pursuant to our conversation, Nangle Consulting Associates, Inc. (NCA) has prepared the following work plan for peer review services to be rendered during the completion of site characterization activities by others at the above referenced properties. Based upon our current understanding of project requirements, it is recommended that cost estimates for services to be rendered on this project be provided according to the format for tasks proposed for completion that corresponds to the outline provided by developer's consultant, EnviroTrac Ltd (EnviroTrac) in their correspondence dated 22 May 2016 to Mr. Mathew Maggiore. Specifically, for each of the site characterization tasks identified within EnviroTrac's proposed work plan, NCA will provide cost estimates for peer review services prior to completion. Accordingly, Task 01 includes the following activities.

**Task 01 Project Planning**

- Prepare a Site-specific Health and Safety Plan in accordance with the requirements of OSHA 29 CFR 1910.120;
- Review available environmental documents, compile existing analytical data into comprehensive data tables, and prepare appropriate figures depicting relevant site features;
- Conduct a site visit to locate and evaluate existing groundwater monitoring wells relative to their viability to yield representative water table elevation measurements and groundwater samples;
- Measure depth to water and non-aqueous phase liquids, if present, in each identified groundwater monitoring well.
- Identify proposed drilling locations consistent with the requirements for utility notification;

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For the above scope of work that is recommended by this office, review of the Health and Safety Plan, participate in the proposed site visit and review proposed drilling locations in the field with representatives of EnviroTrac, estimated costs are in the range of \$500-\$750, which is considered to be a “not to exceed” limit without your prior authorization. Upon completion of Task 01, there will be a better understanding of the requirements for Task 02 and cost estimates for the corresponding peer review services will be provided at that time.

We hope that the approach outlined above meet with your approval, if so please sign and return one copy of the enclosed Work Order No. 746.02. Should you have any questions or require further assistance, please feel free to contact either Mr. James Parker, L.S.P. or me at your convenience. We appreciate your consideration of this firm for this project.

Sincerely,

NANGLE CONSULTING ASSOCIATES, INC.

Jeffrey A. Nangle, P.E., L.S.P.

Enclosure(s): Schedule of Fees and Conditions; Schedule of Fees  
File 746.02

SCHEDULE OF FEES AND CONDITIONS  
NANGLE CONSULTING ASSOCIATES (NCA)

WORK ORDER CONTRACT NO.: 746.02

Services by Partners, Associates and Staff

Fees for consulting services are based upon time worked on the projects by staff personnel. (The fee will be computed based on the attached Hourly Rate Schedule.) This schedule reflects payroll costs of salaries, fringe benefits and related costs such as sick leave, vacation and holidays; unemployment, excise and payroll taxes; Social Security; unemployment compensation insurance; retirement; and medical insurance benefits. This schedule also provides for administrative expenses not directly chargeable to the project, as general overhead and profit. The provisions of these Terms and Conditions are severable. The invalidity of any part of these Terms and Conditions shall not invalidate the remainder of these Terms and Conditions nor the remainder of any portion hereof. These printed Terms and Conditions cannot be modified orally or by any course of conduct. Any modification must be acknowledged in writing by NCA. 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 NCA except upon prior written consent of NCA.

1. Fees and Expenses

(a) The contract price quoted in this proposal is based upon the hourly rate schedule attached in U.S. dollars.

(b) The contract price quoted may include the following:

(i) Automobile Expenses

Travel from our Canton office in personal vehicles by NCA employees will be billed at \$0.26 per mile for travel to the project site, public meetings or public hearings and elsewhere as requested by the Client.

(ii) Subcontractors

To the extent required to perform the Work, NCA will engage subcontractors to provide and operate machinery and equipment such as backhoes and drilling rigs. Charges of these contractors plus a ten percent (10%) overhead and administrative fee will be billed to the Client in addition to the cost of the Work. NCA will advise the Client when subcontractors will be necessary to complete the Work.

(iii) Laboratories

Laboratory services may be required to analyze data gathered by NCA in the field. NCA will notify the client when NCA considers laboratory analysis to be necessary for NCA to render a professional opinion. Laboratory charges will be billed to the client at NCA's cost plus a ten percent (10%) overhead and administrative fee.

(iv) Other

Charges of all other subcontractors necessary to perform the Work shall be billed to the client at NCA's cost plus ten percent (10%). NCA shall, prior to undertaking the Work (unless it was not then possible to do so) notify the client when services not to be performed by NCA and not within the quoted price are required to complete the Work.

2. Invoices

NCA will submit invoices not more than twice each month. Invoices outstanding after 30 days will bear interest at 1.5% per month (18% per year). In the event NCA files suit to collect monies outstanding and succeeds in collecting the amount sought, Client shall also pay all of NCA's costs and expenses of collection efforts including attorney's fees.

3. On-site Construction

In the event there is construction on the site while NCA is engaged to perform the Work on the site, Client acknowledges that NCA bears no responsibility for any contractor's compliance with all applicable health and safety laws, rules and regulations affecting the contractor and/or its employees or for contractor's performance of its obligations to the Client.

4. Right of Entry

NCA shall notify client as soon as reasonably possible of NCA's schedule to perform Work at the site.

Client agrees to make the site accessible to enable NCA to perform the Work. Client further acknowledges that the site may be adversely affected by equipment such as trucks and drilling rigs. NCA shall attempt to minimize such effect but shall not be responsible for any such effects which may be reasonably anticipated (including but not limited to tire marks, damaged blacktop, trees and shrubs) from performance of the Work.

5. Site Identification/History

Client agrees to provide NCA with a legal description of the site and all plans of the site in the Client's possession. NCA is entitled to rely upon information provided by the Client as being accurate and complete. NCA SHALL NOT BE REQUIRED TO CONDUCT ANY EXPLORATION OR INVESTIGATION OR PERFORM ANY WORK ON PROPERTY NOT DEFINITELY IDENTIFIED AS BEING PART OF THE SITE.

Client also agrees to provide NCA with all details in client's possession or otherwise known to client as to the history of the site and all prior uses of the site.

Client acknowledges that NCA shall not be liable for damage to any subterranean structure, including, but not limited to utility lines, telephone lines, fuel tanks and drainage structure (the "Subterranean Structures") unless accurately shown on a survey or engineering plan provided by Client to NCA. Client agrees to defend and indemnify NCA from all claims against NCA arising out of damage to any Subterranean Structures unless such damage was caused by NCA's negligence or that of its agents, servants or contractors.

6. Professional Liability Insurance

(a) CLIENT ACKNOWLEDGES THAT PROFESSIONAL LIABILITY INSURANCE FOR CONSULTANTS INVESTIGATING ENVIRONMENTAL HAZARDS ARE SUBJECT TO THE TERMS AND CONDITIONS OF SECTION 7.0 LIMITATIONS OF LIABILITY/INDEMNITY.

(b) NCA carries statutory Workmens Compensation insurance and general liability insurance. Upon request of client, NCA will provide evidence of such insurance.

7. Limitation of Liability/Indemnity

(a) CLIENT ACKNOWLEDGES THAT NCA HAS BEEN RETAINED AS AN ENVIRONMENTAL CONSULTANT AND RENDERS A PROFESSIONAL OPINION. CLIENT RECOGNIZES THAT IN RENDERING THE PROFESSIONAL OPINION, NCA MUST MAKE JUDGMENTS, INCLUDING, BUT NOT LIMITED TO, THE ECONOMIC FEASIBILITY OF ALTERNATIVES TO THE WORK. IN NO EVENT SHALL NCA BE LIABLE OR RESPONSIBLE FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES OR LOSS OF PROFIT OR REVENUE. NCA SHALL BE LIABLE TO CLIENT ONLY WHERE NCA'S PERFORMANCE OF THE SCOPE OF WORK DOES NOT MEET THE STANDARDS OF CARE PREVAILING AMONG ENVIRONMENTAL CONSULTANTS AND LSPs (LICENSED SITE PROFESSIONALS) IN THE GREATER BOSTON AREA.

NOTWITHSTANDING THE FOREGOING, EXCEPT AS SPECIFICALLY PROVIDED BELOW, NCA'S LIABILITY TO CLIENT SHALL NOT EXCEED \$25,000. CLIENT ACKNOWLEDGES THAT IT HAS READ AND AGREED TO THIS LIMITATION OF LIABILITY, WHICH CLIENT ACKNOWLEDGES IS REASONABLE IN LIGHT OF THE LIMITED SCOPE OF WORK.

CLIENT WILL, BY PAYMENT OF ADDITIONAL FEES PROVIDED BELOW, INCREASE THE LIMIT OF NCA'S LIABILITY IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

<u>Liability Limit</u>	<u>Additional Fee</u>
\$50,000	\$100
\$100,000	\$150
\$250,000	\$200
\$500,000	\$375
\$1,000,000	\$750

IN NO EVENT SHALL NCA'S LIABILITY TO CLIENT EXCEED THE LIMIT SELECTED BY CLIENT ABOVE, NOTWITHSTANDING NCA'S FAILURE TO CONFORM GENERALLY ACCEPTED STANDARDS FOR ENVIRONMENTAL CONSULTANTS AND/OR LSPs IN THE GREATER BOSTON AREA.

(b) TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS NCA AND ITS SUBCONTRACTORS, CONSULTANTS, AGENTS, OFFICERS, DIRECTORS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL, INCLUDING BUT NOT LIMITED TO FEES AND CHARGES OF ATTORNEYS AND COURT AND ARBITRATION COSTS, ARISING OUT OF OR RESULTING FROM THE SERVICES OF WORK OF NCA OR ANY CLAIMS AGAINST CONSULTANT ARISING FROM THE ACTS, OMISSIONS OR WORK OF OTHERS TO THE FULLEST EXTENT PERMITTED BY LAW, SUCH INDEMNIFICATION SHALL APPLY REGARDLESS OF THE FAULT, NEGLIGENCE, BREACH OF WARRANTY OR CONTRACT, OR STRICT LIABILITY OF NCA.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ABOVE INDEMNIFICATION PROVISION EXTENDS TO CLAIMS AGAINST NCA WHICH ARISE OUT OF, ARE RELATED TO, OR ARE BASED UPON THE ACTUAL OR THREATENED DISPERSAL, DISCHARGE, ESCAPE, RELEASE OR SATURATION OF SMOKE, VAPORS, SOOT, FUMES, ACIDS, ALKALIS, TOXIC CHEMICALS, LIQUIDS, GASES OR ANY OTHER MATERIAL, IRRITANT, CONTAMINANT OR POLLUTANT IN OR INTO THE ATMOSPHERE, OR ON, ONTO, UPON, IN OR INTO THE SURFACE OR SUBSURFACE (A) SOIL, (B) WATER OR WATERCOURSES (C) OBJECTS, OR (D) ANY TANGIBLE OR INTANGIBLE MATTER, WHETHER SUDDEN OR NOT. SUCH INDEMNIFICATION SHALL NOT APPLY TO CLAIMS, DAMAGES, LOSSES OR EXPENSES WHICH ARE FINALLY DETERMINED TO RESULT FROM WILLFUL OR RECKLESS DISREGARD BY NCA OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

THE CLIENT FURTHER WAIVES ALL CLAIMS AGAINST NCA AND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS NCA FROM ALL CLAIMS WHICH ARE ALLEGED TO HAVE ARISEN FROM NCA'S FAILURE TO PROVIDE RESULTS SUPERIOR TO THOSE NORMALLY ATTAINED OR ATTAINABLE THROUGH CONFORMANCE WITH GENERALLY ACCEPTED PROFESSIONAL STANDARDS OF PRACTICE IN THE GREATER BOSTON AREA.

INDEMNITY

EXCEPT TO THE EXTENT SUCH "COSTS" (AS DEFINED BELOW) RESULT FROM NCA'S FAILURE TO COMPLY WITH THE STANDARDS OF CARE IN EFFECT IN THE GREATER BOSTON AREA FOR ENVIRONMENTAL CONSULTANTS AND LSPs, CLIENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS NCA, ITS DIRECTORS, OFFICERS, SERVANTS, AGENTS, EMPLOYEES AND SUBCONTRACTORS FROM AND AGAINST ALL CLAIMS, DAMAGES AND EXPENSES, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHERWISE, INCLUDING ATTORNEY'S FEES, (COLLECTIVELY "COSTS") ASSERTED AGAINST NCA OR CLIENT ARISING OUT OF NCA'S PERFORMANCE OF THE SCOPE OF WORK.

8. Recognition of Risks

The client recognizes that special risks are associated with identification of subsurface conditions. Even a comprehensive sampling and testing program implemented with sophisticated equipment and experienced personnel may fail to detect certain conditions because they are hidden. Environmental, geologic and geotechnical conditions which NCA may properly infer between sampling points may be significantly different from those which actually exist. While these risks can never be entirely eliminated, certain techniques can be applied to help reduce them to a level deemed tolerable by the Client. The scope of services selected by the Client is that which the Client selected in light of the Client's own risk preferences.

9. Records

(a) All field data, field logs, field notes, laboratory data, preliminary reports, calculations and other information except as contained in a report furnished to Client shall remain the property of NCA.

In the event any such documents come into Client's possession, Client shall not disclose the documents or the information contained there to any third-party unless required by law or regulation to do so.

(b) NCA will retain all pertinent records relating to services performed for a period of five (5) years following submission of that related work product which is for those services provided in accordance with the requirements of 310 CMR 40.0014(2). Those documents which shall be preserved and maintained include either a Class A or B Response Action Outcome Statement or No Further Action Letter for the disposal site that is the subject of the submittal, or for the duration of the design life of the Permanent Solution whichever is greater. Such records will be made available to Client or Client's designees upon receipt by NCA of written instructions from Client. Client may not reproduce or transmit such documents to any third-party without NCA's prior written consent.

10. Disposal of Samples

(a) General

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

(b) Disposal of Hazardous Samples

If samples collected from the site contain substances defined as "hazardous" by federal, state or local statutes, regulations, codes, or ordinances, NCA shall have the right to: (1) dispose of samples by contract with a qualified waste disposal contractor; or (2) in accordance with Client's written directions, ship such samples by an appropriately licensed transporter to a licensed disposal site. Client shall pay all costs and expenses associated with the collection, storage, transport and disposal of samples. If Client requests, in writing, that any such sample be retained for a period in excess of thirty (30) days, arrangements will be made to store such samples at Client's expense, and Client will pay an additional fee as charged.

(c) Abandonment of Observation Wells

From the time of installation, groundwater observation/monitoring wells placed on behalf of or on the property of the Client shall become the property of Client and shall be maintained by the Client in accordance with the provisions of 310 CMR 40.0021 of the Massachusetts Contingency Plan (MCP) which states: "No person shall falsify, tamper with, alter, destroy, disturb or otherwise unlawfully interfere with any response action, including, but not limited to, any recovery or control mechanism or system, or any monitoring device or method, which any person has undertaken, is undertaking or intends to undertake, or which any person is required to perform or maintain, pursuant to M.G.L. C 21E, 310 CMR or any order or determination issued by the Department." Further, upon completion of related work, it shall be the responsibility of the Client to abandon such monitoring wells in accordance with protocols established by the Massachusetts Department of Environmental

Protection.

11. Notice to Public Authorities

Client acknowledges that in the event of an emergency affecting the health of persons or the safety of the environment, and otherwise as NCA believes may be required by law, NCA may notify governmental authorities concerning the presence of certain substances at the site. NCA shall first attempt to notify the Client but if, in NCA's professional judgment, it is appropriate to do so, NCA need not contact the Client first.

12. Limitations on Findings

The findings, conclusions and recommendations presented in an environmental site assessment report to the Client are valid only for a period of ninety (90) days from the date submitted to the Client unless otherwise agreed in writing. Neither Client nor any third-party may rely upon the Report beyond said ninety (90) day period without NCA's consent. Should the Client wish to rely upon the opinions, findings and/or conclusions set forth in the site assessment report at a point in time more than ninety (90) days from the date of said report, Client must contact NCA so as to provide NCA with a reasonable opportunity, upon mutually acceptable terms and conditions, to verify findings and/or conclusions and/or to conduct any further investigation, research or analysis reasonably considered necessary or appropriate by NCA based upon new and/or changed factual, legal and/or regulatory circumstances, conditions or standards. Your failure to adhere to the requirements set forth in this paragraph may expose you and/or your project to regulatory action, risks and/or liability which may have been avoided or mitigated by your compliance with these requirements. Notwithstanding any of the above, those submissions and/or opinions rendered by NCA pursuant to the provisions of 310 CMR 40.0000 shall be in accordance with 310 CMR 40.0015(4) of the MCP and subject to the corresponding requirements and time frames stated therein.

13. Discovery of Hazardous Materials Affecting the Work

If in the course of performing the Work, NCA discovers materials which NCA believe to be "oil or hazardous materials" as defined in M.G.L., c. 21E, NCA may suspend the Work immediately for an indefinite period of time to permit NCA and the Client to agree upon a course of action. NCA need not resume the Work until the Client and NCA have agreed in writing as to a revised scope of work and an adjusted fee. In the event Client and NCA are unable to agree, NCA shall not be required to complete the Work and Client shall pay NCA on an hourly basis for time spent by NCA in accordance with the schedule attached to this Proposal as well as for all costs incurred by NCA from subcontractors all in accordance with Section 1 above.

14. Indemnification of Remedial Measures

NCA does not accept responsibility or any subsequent liability resulting from the design and implementation of contaminated soil or groundwater remediation measures unless NCA's engagement includes preparation of all designs, plans, reports and specifications required by the Massachusetts Contingency Plan (310 CMR 40.0 et. seq.) and oversight of all site remediation activities. In no event shall NCA's liability exceed the limitations and conditions stated in paragraph 7 of this agreement.

# NANGLE CONSULTING ASSOCIATES, INC.

## SCHEDULE OF FEES

<u>SERVICE</u>	<u>HOURLY RATE</u>
Litigation Services	\$175.00
Principal	150.00
Senior Project Manager	114.00
Senior Project Manager Meetings	118.00
Senior Project Manager Field	110.00
Senior Engineer	102.00
Senior Engineer Meetings	105.00
Senior Engineer Field	100.00
Project Manager	83.00
Project Manager Meetings	90.00
Project Manager Field	85.00
Project Engineer	72.00
Project Engineer Meetings	72.00
Project Engineer Field	70.00
Computer Aided Drafting	67.00
Senior Environmental Technician	52.00
Environmental Technician	40.00
Technical Typist/Editor	39.00

# NANGLE CONSULTING ASSOCIATES, INC.

Environmental Engineering and Land Use Planning

45 Dan Road – Suite 115, Canton, Massachusetts 02021

## Order/Proposal

No. 746.02

Date: July 18, 2016

<b>WORK ORDERED BY:</b> City of Somerville 93 Highland Avenue Somerville, MA 02143  <b>WORK TO BE BILLED TO:</b>  Mr. Matthew P. Maggiore The Maggiore Companies 13 Wheeling Avenue Woburn, MA 01801	<b>DESCRIPTION OF PROPERTY:</b>  343-349 and 351 Summer Street Somerville, Massachusetts
<b>DESCRIPTION OF WORK TO BE PERFORMED:</b>  Scope of work as outlined in work order correspondence dated July 15, 2016.	
Services rendered under this Order/Proposal are subject to the provisions of the attached "Schedule of Fees & Conditions." Client acknowledges that he has read, understands and agrees to be bound by its terms and that this agreement supersedes and cancels all previous written and oral agreements.  NOTE: Accounts are due in full within 30 days of billing. A Finance Charge will be added after 30 days at a "Periodic Rate" of 1.5% per month which is an Annual Rate of 18% applied to the unpaid balance.	Deposit to be included with this order: \$ 0  Authorization to proceed with above order:  By: _____ SIGNATURE  _____ PRINT NAME  _____ DATE