

# Not to Exceed (NTE) Agreement

This Agreement for professional services will be by and between BSC GROUP, INC. (hereinafter "CONSULTANT") a Massachusetts corporation, with a place of business at 803 Summer Street, Boston, MA 02127, and the Client (hereinafter "CLIENT") and will consist of the following Sections and, as applicable, any exhibits thereto:

## A. CLIENT INFORMATION

Client Name	Town of Spencer Conservation Commission
Client Address	Spencer Town Hall 157 Main Street Spencer, MA 01562
Client Contact	Lauren Vivier

## B. EFFECTIVE DATE: 2/17/2023

## C. PROJECT INFORMATION

Project Name	Peer Review – Notice of Intent U24-17 Meadow Road
Project Address (the "Site")	U24-17 Meadow Road

## D. SCOPE OF SERVICES (PHASE/TASK)

See Attached 1.0 Scope of Services and 2.0 Additional Services

## E. SCHEDULE OF SERVICES (MILESTONES)

See Attached 3.0 Schedule For Services

## F. FEE FOR SERVICES

BSC has estimated a not-to-exceed amount of \$4,420

Task Name		Cost
Task 1	Site Visit	\$1180
Task 2	Document Review Letter Report	\$1800
Task 3	Supplemental Review	\$720
Task 4	Public Hearing Coordination	\$720
TOTAL		\$4420

#### G. TERMS AND CONDITIONS

Attached as Exhibit G.

**BSC Group, Inc.**

**Client**

Signature:



Signature:

Name:

Matt Burne, PWS

Name:

Title:

Senior Ecologist

Title:

Date:

2/17/2023

Date:

FEBRUARY 17, 2023

[www.bscgroup.com](http://www.bscgroup.com)

Lauren Vivier  
Town of Spencer Conservation Commission  
Spencer Town Hall  
157 Main Street  
Spencer, Massachusetts 01562

RE: **Peer Review – Notice of Intent**  
**U24-17 Meadow Road, Spencer, Massachusetts**

Dear Lauren and members of the Commission,

BSC Group, Inc. (BSC) is pleased to submit this proposal for Peer Review Services relative to the Notice of Intent for work proposed to clean up dumped garbage and debris within Riverfront Area on a parcel of land located at U24-17 Meadow Road (the Site) in the Town of Spencer, Massachusetts. Gordon Latour of Latour Realty LLC is the project Applicant, and is represented by Glenn Krevosky of EBT Environmental Consultants, Inc.

BSC has prepared this proposal based upon the following understanding of your needs and circumstances that have affected the scope of services:

For the proposed peer review services, BSC will perform a site visit to verify resource areas located on the Site, review the NOI and site plan (“*Definitive Site Plan at Meadow Road, Spencer, MA,*” dated January 25, 2021), provide a letter report commenting on the submitted information, review one (1) package of supplemental information if provided by the applicant following BSC’s initial review, and attend one (1) remote Conservation Commission public hearing for the project. Our review will evaluate the project’s conformance with the Massachusetts Wetlands Protection Act (WPA) and associated regulations, the Spencer General Bylaws, Article 7 and the Conservation Commission Rules and Regulations (Bylaw).

BSC, the *Company*, proposes to provide to the Spencer Conservation Commission, the *Client*, the following specific services in accordance with the terms and conditions of our Peer Review/Construction Monitoring and Design Services Agreement with the Town.

## 1.0 SCOPE OF SERVICES

The following services will be performed as part of this Agreement:

### 1.1 *Site Visit*

A BSC Senior Wetland Scientist will conduct a site visit to view the location of proposed work in relation to regulated wetland resource areas. BSC will review Mean Annual High Water shown on the Project Plan and the BVW boundaries in accordance with the Massachusetts handbook on *Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act*.

Prior to BSC evaluation of the wetland resource boundaries, flagging will need to be in place and visible in the field and should be labeled according to the above-mentioned plan. The ground will need to be clear of snow to conduct the site visit.

### 1.2 *Document Review and Letter Report*

A BSC Senior Wetland Scientist will review NOI documents including the site plans, other project documents and background materials such as NRCS soils maps, NHESP information, FEMA floodplain maps, and USGS topographic maps, and will review the proposed project for compliance with state and local wetland regulations. The BSC scientist will prepare and deliver a detailed letter report to the Commission including findings of our review and supporting recommendations resulting from the site visit and document review. The report will discuss project compliance with state and local wetland regulations and will provide a list of recommendations for the Commissions' consideration and any recommended changes (if necessary) to the NOI application.

### 1.3 *Supplemental Review*

BSC will review one (1) supplemental package of information provided in response to our letter report to the Commission. An updated letter report will be prepared and provided to the Commission based on this review. The updated report will document the adequacy of the supplemental information provided to address the findings and recommendations identified in the original report. For purposes of this budget, it is assumed that the supplemental information required will be minimal. Should significant revisions be made that require more than minimal review of the supplemental information, this budget will need to be increased accordingly.

### 1.4 *Coordination and Meeting Attendance*

BSC will coordinate with the Commission, as needed. At times, BSC will discuss issues and results of evaluations with the Commission and/or its agents. We are assuming a 1-hour level of effort for this task. Should additional time be required, it will be billed on a time and materials basis. BSC will coordinate only with the Client unless specifically directed to communicate with the project Applicant.

BSC will attend one (1) Conservation Commission public hearing on the project. It is assumed that such public meeting will be conducted via Zoom (or similar, remote platform). Should attendance at additional hearings be required, it will be provided as an additional service. In-person meetings will necessitate additional budget to accommodate for added time involved in attendance.

## 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 scope above. If required, these services will be performed for an additional fee in accordance with our Peer Review/Construction Monitoring and Design Services Agreement with the Town.

- Site visits beyond that included in Section 1.0
- Attendance at any meetings or public hearings not included in Section 1.0
- Review additional or revised materials that may be requested of the applicant subsequent to the supplemental reviews specified in Section 1.0
- Engineering peer review services
- Any services not specifically described in Section 1.0 above

## 3.0 SCHEDULE FOR SERVICES

BSC proposes to begin the services identified in Section 1.0 of this Agreement upon receipt of written authorization to proceed from the Town of Spencer, and within an overall project schedule to be agreed upon with the Client.

This offer to perform services is valid for a period of thirty (30) days from the date of this proposal.

## 4.0 FEE FOR SERVICES

- 4.1 BSC has estimated a budget of **Four Thousand Four Hundred Twenty Dollars (\$4,420)** inclusive of any and all direct reimbursable expenses for the services described in Section 1.0 of this Agreement and proposes to provide these services as a lump sum in accordance with our Peer Review / Construction Monitoring and Design Services Agreement with the Town. The Company shall inform the Client as soon as practical if it becomes necessary to exceed the budget in order to perform all proposed and additional services required.

The Client shall provide BSC with any specific billing format required for prompt payment of invoices. The mailing address for all payments is:

BSC Group, Inc.  
803 Summer Street  
Boston, MA 02127

## 5.0 GENERAL CONSIDERATIONS

- 5.1 BSC will perform all services in a timely manner, but it is agreed between the parties that BSC cannot be responsible for delays occasioned by factors or parties beyond its control, nor by factors which could not reasonably have been foreseen at the time this Agreement was prepared and executed. Delays of this nature shall extend the completion date.

- 5.2 BSC's submittal will depend on the timely receipt of any required information from other project team members and/or the Client.
- 5.3 During the performance of the services described within this Agreement, the Scope of Services, and compensation therefore, may be adjusted by mutually agreed upon Amendments to this Agreement.
- 5.4 The attached "Statement of Terms and Conditions" is made a part of this Agreement.
- 5.5 This proposal is valid for a period of thirty (30) days.
- 5.6 **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 any needed 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.**

Please execute two (2) copies of this Agreement and initial the attached Terms and Conditions and return one (1) copy with an original signature for our records. BSC welcomes the opportunity to provide professional services for this project.

Sincerely,

BSC Group, Inc.



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Matt Burne, PWS  
Senior Ecologist

**AGREE AND ACCEPTED BY:**

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Project Manager Name, Title

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Date

## EXHIBIT G: NTE Terms and Conditions

These Terms and Conditions are part of a proposed agreement submitted to the Client for its consideration (the “Proposal”). Unless otherwise specified, all references herein to “Sections” are to Sections of the Proposal and any exhibits incorporated therein, and all other capitalized terms are as defined in the Proposal. The Proposal is valid for a period of thirty (30) days after being offered by Consultant and will be considered revoked if not accepted within that period, unless the Consultant agrees to an extension in a separate writing. If the Client accepts the Proposal within the applicable period, the Proposal, including these Terms and Conditions, shall constitute the parties’ Agreement.

### Article 1 - Term

This Agreement shall commence on the Effective Date identified in Section B and remain in effect until the completion of the Consultant’s services hereunder, unless extended or terminated in accordance with these Terms and Conditions.

### Article 2- Scope of Consultant Services

The Consultant will perform the services outlined in Section D (the “Consultant Services”).

If the Consultant Services include construction phase services and/or administration of the contract between the Client (or the owner of the Site) and its contractor(s) for the Project (the “Contractor”), the Consultant will become generally familiar with the progress and quality of the work of the Contractor (the “Contractor’s Work”) and will endeavor to guard the Client against defects and deficiencies in the Contractor’s Work. However, the Contractor will remain solely responsible for the construction means, methods, techniques, sequences and procedures for the Project, for safety programs and for the acts and omissions of itself and its subcontractors.

Unless otherwise provided in Section D, the Consultant and its subconsultants and independent contractors shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to hazardous materials in any form at the Site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl, or other toxic substances (“Hazardous Materials”), provided, however, that the Consultant shall report to the Client the presence and location of any Hazardous Materials observed by the Consultant or suspected to exist. If asked by the Client to provide consulting services relating to Hazardous Materials, the Consultant shall carry no liability for Hazardous Materials but shall require any subconsultants providing such services to carry such insurance as the parties may negotiate hereinafter and, in any event, insurance meeting the requirements set forth in Article 9.

### Article 3 - Schedule of Consultant Services

The Consultant will perform the Consultant Services in accordance with the schedule set forth in Section E; however, the Consultant will not be responsible for delays caused by other parties or by other circumstances outside its reasonable control, including but not limited to force majeure events.

### Article 4 - Changes and Additions

The Consultant shall review the Project costs and shall report in writing to the Client any conditions which would warrant a change in the scope of the Contractor’s Work, the Project budget, methods of investigation,

and/or the Consultant Services. The Client reserves the right at any time to make changes or additions to the scope of the Contractor's Work and/or the Consultant Services. Such changes shall be agreed to and authorized in writing by the Client and the Consultant. The Consultant shall not perform any services beyond the scope of this Agreement, or subsequent amendment, without written approval of the Client.

#### **Article 5 - Compliance with Laws**

The Consultant shall use reasonable efforts and judgment, consistent with professional standards in the locale of the Project, to identify and interpret present Federal, State and local laws, rules, codes and regulations as they apply to the Project ("Legal Requirements"), and to require its directors, officers, employees, agents, suppliers, sub-consultants, independent contractors, volunteers, members, guests, invitees and vendors (collectively, "Consultant Responsible Parties") to use reasonable efforts to comply with such Legal Requirements.

#### **Article 6 - Use of Subconsultants.**

The Consultant may utilize the services of subconsultants, subcontractors or other independent contractors subject to the Client's approval, which approval will not be unreasonably withheld.

#### **Article 7 - Compensation**

The Consultant's compensation shall be one or more payments computed as a multiple of actual hourly salary attributable to the time each person actually provides services under the relevant scope, the total of which payment(s) shall not exceed the "Not to Exceed" Amount provided in Section F.

Compensation for the Consultant's employees shall be computed at the employee's actual hourly salary times a multiplier as per an agreed-upon fee schedule. See Section F.

The Client will reimburse the Consultant for its expenses which are actually made or incurred in a not-to-exceed aggregate amount identified in the Agreement. See Section F. Expenses will be subject to a ten percent (10%) markup.

The Consultant's compensation shall be equitably adjusted if the Consultant Services are suspended, delayed, extended, or otherwise materially changed due to causes outside of the Consultant's reasonable control.

In the event the Client approves additional Consultant services as provided in Article 4, the Client shall compensate the Consultant for such additional services by such adjustment to the Not to Exceed Amount or other compensation as the parties may agree to in writing.

#### **Article 8 - Payment Provisions**

Payments shall be made upon time and expenses expenditures. Unless otherwise agreed to in writing, the Client's payment of all invoices will be due within thirty (30) days of receipt of an invoice for all undisputed amounts.

#### **Article 9 – Insurance**

##### **9.1. Professional Liability Insurance Coverage**

The Consultant shall maintain at all times required under this Agreement professional liability insurance



coverage for professional errors and omissions arising out of the performance of services under this Agreement in an amount not less than \$1,000,000.

### 9.2. Deductible

The Consultant may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Client.

### 9.3. Worker's Compensation, General Liability, Automobile and Other Insurance

The Consultant shall carry, and shall ensure that each of its subconsultants and independent contractors carries, the following coverages:

- a) Worker's compensation insurance as required under federal and applicable State law.
- b) Employer's liability insurance with a minimum limit per accident or disease of \$1,000,000.
- c) Commercial general liability insurance for bodily injury and property damage in the combined single limit of \$1,000,000.
- d) Comprehensive automobile liability insurance for bodily injury and property damage in the combined single limit of \$1,000,000.

### 9.4. Limitations of Professional and Contractual Liability

- a) Consultant Obligation for Successful Claim. In recognition of the risks, rewards and benefits of the Project available to the Client and the risks and total fee of the Consultant, the Consultant and the Client have agreed that, notwithstanding any other provision of this Agreement, the total liability at law or otherwise of the Consultant and the Consultant Responsible Parties for any and all injuries, claims, losses, expenses or claims expenses, including but not limited to claims by the Client against the Consultant for indemnification and/or contribution due to third party claims against the Client, relating to the Project or arising out of this Agreement from any cause or causes shall not exceed the Consultant's aggregate fee for Consultant Services rendered on the subject project. Such causes include but are not limited to the Consultant's or any of the Consultant Responsible Parties' alleged breach of contract, breach of warranty, strict liability, or negligent acts, errors, or omissions.
- b) Consequential Damages. Under no circumstances shall the Consultant or the Consultant Responsible Parties be liable to the Client under any theory of liability 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 the Consultant's or any of the Consultant Responsible Parties' fault or negligence, regardless of whether the Consultant has been advised of the possibility of such consequential damages.
- c) Timely Notification of Claims. The Client shall report to the Consultant any errors or omissions arising out of the Consultant's services that the Client becomes aware of within two (2) weeks of discovery. The Client agrees to require the same of its contractor. Should legal liability for such errors or omissions exist, failure by the Client or its contractor to notify the Consultant as provided above shall relieve the Consultant from the costs of remedying such errors or omissions above what the remedy would have cost had notice been provided

within two (2) weeks of discovery.

- d) Client Obligation for Unsuccessful Claim. In the event that the Client makes a claim against the Consultant, at law or otherwise for any alleged error, omission or act arising out of the performance of the Consultant's services, and the Client fails to prove such claim upon final adjudication, then the Client shall pay all costs incurred by the Consultant 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.

#### **Article 10 – Non-Discrimination**

The Consultant shall not discriminate against any person, employee, or applicant for employment because of that person's membership in any legally protected class, including but not limited to that person's race, color, gender, religion, creed, national origin, ancestry, age (40 years and over), sexual orientation, pregnancy, citizenship, gender expression and identity, handicap, disability, genetic information, or veteran status. The Consultant shall not discriminate against any person, employee, or applicant for employment who is a member of, or applies to perform service in, or has an obligation to perform service in, a uniformed military service of the United States, including the National Guard, on the basis of that membership, application, or obligation

#### **Article 11 – Client Responsibilities; Timely Communications**

The Client shall furnish in a timely manner reasonably full information concerning its objectives, schedule constraints, budget and other applicable requirements for the Project, as they may change from time to time. The Client will render decisions and directions as needed to avoid unreasonable delay in the orderly and sequential progress of the Consultant Services and, as applicable, of the Contractor's Work.

#### **Article 12 – Right of Entry**

The Client hereby grants to the Consultant, or represents and warrants (if the Site is not owned by Client), that permission has been duly granted for a Right of Entry by the Consultant and other Consultant Responsible Parties, 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 investigation, in connection with the Consultant Services. Should the Client not own the Site, the Client warrants and represents by acceptance of the Proposal that it has authority and permission of Site owner and any site occupant to grant the Consultant and the Consultant Responsible Parties this right of entry. The Consultant may require evidence of such authority in a form reasonably satisfactory to the Consultant.

#### **Article 13 – Documents**

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents, data or information prepared by the Consultant as instruments of services, shall remain the sole property of the Consultant. All reports and other work preparation by the Consultant for the Client shall be utilized solely for the intended purposes and Site described in this Agreement. The Consultant will retain all pertinent documents for a period of three (3) years following the submission of the Consultant's final report to the Client. Such documents will be available to the Client upon request at the Consultant's office during office hours on reasonable notice, and copies will be furnished by the Consultant to the Client for the total cost of reproduction of the same, including but not limited to staff time and copying costs.

#### **Article 14 – Public Responsibility**

The 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. The Consultant 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. The Client, by acceptance of this Agreement, 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.

#### **Article 15 – Standard of Care; Disclaimer of Warranty**

The Consultant agrees the services provided hereunder shall conform to generally accepted industry standards of care and practice exercised by organizations engaged in performing comparable services in the same locate and under similar circumstances; that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them; and that the recommendations, guidance and performance of such personnel shall reflect such standards of care and practice. No warranty, express or implied, shall apply to Consultant's services or its Instruments of Service.

#### **Article 16 – Suspension and Termination**

Either party may suspend or terminate this Agreement for cause in the event of a material breach upon thirty (30) days' written notice and opportunity to cure.

Notwithstanding any other provision of this Agreement, if the Client suspends or terminates this Agreement in whole or in part without cause, the Client agrees to pay the Consultant for work performed through and including the effective date of the suspension or termination.

In the event the Client suspends the Agreement in whole or in part without cause, the Consultant's compensation may be equitably adjusted upon resumption of the Agreement, including but not limited to address expenses incurred in connection with the interruption and resumption of services and to address increases to the salaries of the Consultant's personnel granted in the ordinary course of its business. Without waiver of any of its other rights, the Consultant may terminate the agreement on thirty days' notice, without further opportunity to cure, if the Client suspends the Agreement without cause for a period of six (6) months or longer.

Without waiver of limitation of its right to terminate for cause, the Consultant may suspend this Agreement in the event that any of its invoices remain unpaid more than sixty (60) days after receipt.

#### **Article 17 - Conflict of Interest**

The Client shall not hire or employ, on either a full-time or part-time basis during the term of this Agreement, any person, or persons so long as such person(s) shall be employed by the Consultant.

The Consultant, its subconsultants and independent contractors shall conduct themselves at all times in a manner reasonably calculated to avoid any conflict of interest relating to this Agreement under Federal, State or local law.

#### **Article 18 - Amendments**

This Agreement may be amended only by a written instrument specifically referencing this Agreement

executed by authorized representatives of the parties

#### **Article 19 – Choice of Law; Legal Proceedings**

This Agreement shall be governed by and enforceable in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws principles. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be brought exclusively in the State or Federal Courts sitting in Suffolk County, Massachusetts and the parties irrevocably submit to such exclusive jurisdiction and venue. In the event the Consultant brings a successful claim for payment of compensation due under this Agreement, the Consultant shall be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which the Consultant may be entitled.

#### **Article 20 – Integrated Agreement; Severability**

This Agreement is the complete and integrated agreement between the parties, superseding any prior written or oral communications and agreements between them relating to the Project and the subject matter of the Agreement. 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 as fully as possible and the unenforceable provision(s) shall be deemed modified to the limited extent required to permit enforcement of the Agreement as a whole.

## Fee Schedule

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### CLASSIFICATION

### HOURLY RATE

#### Professional Staff

Principal: Engineer, Planner, Landscape Architect, Land Surveyor, Scientist	\$235.00 to \$310.00
Managing: Engineer, Planner, Landscape Architect, Land Surveyor, Scientist	\$180.00 to \$250.00
Senior Project: Engineer, Planner, Landscape Architect, Land Surveyor, Scientist	\$140.00 to \$205.00
Project: Engineer, Planner, Landscape Architect, Land Surveyor, Scientist	\$125.00 to \$190.00
Staff: Designer, Planner, Landscape Architect, Land Surveyor, Scientist	\$90.00 to \$130.00
Expert Witness Testimony/Court Appearance	\$300.00 to \$350.00

#### Technical Support Staff, Specialists

Senior: Calculator, Chief of Party, Drafter, Instrument Operator, Technician, Text Processor, Administration, Support, Analyst	\$95.00 to \$175.00
Staff: Calculator, Drafter, Instrument Operator, Technician, Text Processor, Administration, Support, Analyst	\$75.00 to \$125.00

#### Field Survey Party\*

3-person Field Crew	\$280.00 to \$390.00
2-person Field Crew	\$180.00 to \$265.00
1-person Field Crew	\$150.00 to \$220.00

#### Expenses

Direct Expenses will be billed with a 10% markup. Direct Expenses include cost of transportation, shipping/courier service, 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.