

# TRACEY

June 15, 2016  
Proposal No. 16-061P

New Bedford Conservation Commission  
133 Williams Street – Room 304  
New Bedford, MA 02740  
Attention: Ms. Sarah E. Porter, Conservation Agent

Re: NOI Document Review  
Nemasket Street Lots for  
Proposed Nemasket Street  
Recreation Area  
Nemasket and Ruggles Street  
New Bedford, MA

Dear Ms. Porter:

TRACEY Environmental (TRACEY) is pleased to present to you our proposal for completing a review of the Notice of Intent (NOI) for the Nemasket Street Lots for a Proposed Nemasket Street Recreation Area at the intersection of Nemasket and Ruggles Street (the “Property”) in New Bedford, Massachusetts. The purpose of the review is to evaluate whether historical and documented contamination present at the Property may be impacted by the proposed use as a Recreation Area, including the proposed storm water infiltration system.

TRACEY understands that existing documentation describes the contamination present at the Property. The City of New Bedford website contains the materials that will be reviewed by TRACEY to assess the potential impact of the proposed recreation development on the existing, documented contaminants at the Property.

## **SCOPE OF SERVICES**

To accomplish the stated objectives, the following scope of services is proposed:

1. TRACEY will review available documents on the City of New Bedford website regarding the Property to become familiar with the existing conditions. Due to the extensive number of documents available, TRACEY will be assisted by the Conservation Commission to focus our research and review of the pertinent documents. In addition, TRACEY will review the proposed activities that may result in storm water being directed to the area of previously documented contamination.

2. TRACEY will evaluate the data available to assess the existing conditions and potential impact of additional storm water generated by the proposed redevelopment of the Property.
3. TRACEY will prepare a document for the New Bedford Conservation Commission regarding the data and reports reviewed, and provide an opinion as to the potential impact on the existing conditions from the proposed Property redevelopment.

### **PROJECT COST**

Billing for the proposed scope of work will be on an estimated number of hours between 20 and 30 hours, for a proposed cost of \$3,000 to \$4,500. We expect that the work will start after the July 4<sup>th</sup> weekend and would be completed approximately 3 weeks thereafter. TRACEY will not exceed the proposed cost estimate unless the scope of work changes, in which case, TRACEY will provide the New Bedford Conservation Commission with an additional proposal. We request this executed document for our records, prior to commencing with the study. Billing is monthly and payment is due upon receipt of invoice.

### **TERMS OF AGREEMENT**

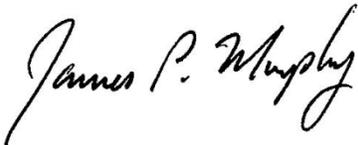
The Terms of Agreement are described in the attachment, which is considered an integral part of our proposal. Our report will be prepared on behalf of and for the exclusive use of the City of New Bedford. The City of New Bedford acknowledges and agrees that the report and the findings in the report shall not, in whole or in part, be disseminated or conveyed, to any other party, or used or relied upon by any other party, in whole or in part, without the prior written consent of TRACEY.

### **ACCEPTANCE**

This proposal is valid for a period of 30 days from the date of issue and may be accepted by signing both copies and returning one to us. We are pleased to have this opportunity to assist you. If you have any questions, please contact TRACEY at [jmurphylsp@gmail.com](mailto:jmurphylsp@gmail.com) or (781) 726-2519.

Sincerely,

TRACEY Environmental Consulting LLC



James P. Murphy, L.S.P.  
Principal

**ACCEPTANCE**

This proposal and the Terms of Agreement are hereby accepted and executed by a duly authorized signatory, who by execution hereof, warrants full authority to act for, in the name, and on behalf of the City of New Bedford.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **TERMS OF AGREEMENT FOR ENVIRONMENTAL CONSULTING SERVICES**

### **THE AGREEMENT**

This AGREEMENT is made by and between TRACEY Environmental Consulting LLC hereinafter referred to as TRACEY, and the City of New Bedford, herein referred to as CLIENT. The AGREEMENT consists of these TERMS, the PROPOSAL identified as Proposal No. 16-061P dated June 15, 2016, and any exhibits or attachments noted in the PROPOSAL. Together, these elements will constitute the entire AGREEMENT superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this AGREEMENT must be mutually agreed to in writing.

The law of the Commonwealth of Massachusetts will govern the validity and interpretation of this AGREEMENT. If any of the provisions contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive the termination of this AGREEMENT for any cause.

### **STANDARD OF CARE**

CLIENT recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made, and that site conditions may change with time. Data, interpretations, and recommendations by TRACEY will be based solely on information available to TRACEY. TRACEY is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.

Client recognizes that TRACEY services require decisions that are not based upon pure science, but rather upon judgmental considerations. CLIENT expects the services performed by TRACEY under this AGREEMENT to be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the Environmental Consulting profession practicing at the same time, in the same locality and under similar conditions. Under no circumstance is any warranty, expressed or implied, made in connection with the provision of these services.

### **SITE ACCESS AND SITE CONDITIONS**

CLIENT will grant or obtain free access to the site for all equipment and personnel necessary for TRACEY to perform the work set forth in this AGREEMENT. CLIENT will notify any and all possessors of the project site that CLIENT has granted TRACEY free access to the site. TRACEY will take reasonable precautions to mitigate damage to the site, but it is understood by CLIENT that, in the normal course of work, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the PROPOSAL. Notwithstanding the foregoing, TRACEY shall be responsible for damage that results from gross negligence or willful misconduct of TRACEY, its agents, employees, or subcontractors.

CLIENT agrees to make available to TRACEY any information in its possession or knowledge relative to the presence, location, and configuration of utilities, structures, or other subterranean appurtenances at the site. TRACEY will take reasonable precautions to avoid known subterranean structures, and CLIENT waives any claim against TRACEY, and agrees to defend, indemnify, and hold TRACEY harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified and accurately located, unless the damage or liability resulted from gross negligence or willful misconduct of TRACEY, its agents, employees, or subcontractors.

## **BILLING AND PAYMENT**

CLIENT will pay TRACEY in accordance with the procedures indicated in the PROPOSAL and its attachments. Invoices will be submitted to CLIENT by TRACEY, and will be due and payable upon presentation. If CLIENT objects to all or any portion of any invoice, CLIENT will so notify TRACEY in writing within fourteen (14) calendar days of the invoice date, identify the cause of the disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid.

Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. CLIENT will pay an additional charge of one-and-one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. All time spent per TRACEY's current fee schedules and expenses incurred (including reasonable attorney's fees) in connection with collection of any delinquent amount will be paid by CLIENT to TRACEY.

## **TERMINATION**

This AGREEMENT may be terminated by either party without penalty seven (7) calendar days after written notice provided, however, that client shall be obligated pursuant to the terms hereof for services performed and obligations incurred by TRACEY on client's behalf through the date of termination plus those associated with termination and post-termination activities such as demobilization, modification of schedules, reassigning personnel, decontamination and disposing of equipment, and so on.

**RISK ALLOCATION**

Many risks potentially affect TRACEY by virtue of entering into this AGREEMENT to perform Environmental Consulting services on behalf of CLIENT. The principal risk is the potential for human error by TRACEY. For CLIENT to obtain the benefit of a fee that includes a nominal allowance for dealing with TRACEY's liability, CLIENT agrees to limit TRACEY's liability to CLIENT to \$25,000 for negligent professional acts, errors, or omissions.

Limitations on liability and indemnities in this AGREEMENT are business understandings between the parties voluntarily and knowingly entered into, and shall apply to all theories of recovery including, but not limited to breach of contract, warranty, tort (including negligence), strict, or statutory liability, or any other cause of action, except for willful misconduct or gross negligence. The parties also agree that CLIENT will not seek damages in excess of the limitations indirectly through suits with other parties who may join TRACEY as third-party defendant. "Parties" means CLIENT and TRACEY, and their officers, employees, agents, affiliates, and subcontractors.

Both CLIENT and TRACEY agree that they will not be liable to each other, under any circumstances, for special, indirect, consequential, or punitive damages arising out of or related to this AGREEMENT.

**DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS**

Hazardous materials may exist at a site where there is not reason to believe they could or should be present. TRACEY and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. TRACEY and CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for TRACEY to take immediate measures to protect health and safety.

TRACEY agrees to notify CLIENT when unanticipated hazardous materials or suspected hazardous materials are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. CLIENT also agrees to hold TRACEY harmless for any and all consequences of disclosures made by TRACEY that are required by governing law. In the event the project site is not owned by CLIENT, CLIENT recognizes that it is CLIENT's responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials or suspected hazardous materials.

**DISPUTE RESOLUTION**

All claims, disputes, and other matters in controversy between TRACEY and CLIENT arising out of or in any way related to this AGREEMENT will be submitted to mediation as a condition precedent to litigation. If a dispute of law arises from matters related to the services provided under this AGREEMENT and that dispute requires litigation instead of mediation then:

- 1) The claim will be brought and tried in the jurisdiction of the court where TRACEY's principal place of business is located, and CLIENT waives the right to remove the action to any other county or judicial jurisdiction, and
- 2) The prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, reasonable attorney's fees, and other claim related expenses.