

March 17, 2009

Mr. Mark Ames  
Community Preservation Committee  
Town of Pembroke  
100 Center Street  
Pembroke, MA 02359-2299

Re: Scope of Services  
Hydrologic Investigation  
Furnace Pond

Dear Mr. Ames:

Comprehensive Environmental Inc. (CEI) is pleased to submit this letter agreement for the Professional Engineering Services to provide a hydrologic investigation for Furnace Pond. The goal of the investigation is to establish sufficient groundwater data to be able to analyze the interrelationship of groundwater and surface water in Furnace Pond and the surrounding waterbodies over various seasonal conditions. As a side benefit, additional soil characterization will be performed on both the sediments in the pond as well as underlying soils which will help future permitting efforts. The following tasks are included:

## **Scope of Services**

### **Task 1 – Preliminary Engineering - Identify Locations for Monitoring Well Installation**

CEI will review sediment data previously collected to determine core sampling locations that are representative of the existing pond conditions and surrounding geology. Procedures for collecting sediment/ soil samples and installation of monitoring wells will be developed for proposed monitoring locations. CEI will meet with the Town to present recommended monitoring locations and procedures for collecting core samples from Furnace Pond and temporarily installing groundwater monitoring wells. To study the hydrological flow patterns of groundwater, we anticipate installing 2 wells within the limits of Furnace Pond and 4 wells on land surrounding the pond.

### **Task 2 – Installing Groundwater Monitoring Wells**

Based on the information generated from Task 1, groundwater monitoring wells will be installed at 4 locations around the perimeter of Furnace Pond. A small auger unit mounted to floats will be used to conduct hydrologic exploration and install 2 monitoring wells within the Pond. A GPS unit will be used to guide the auger to the predetermined well locations. CEI will provide oversight of these drilling operations.

### **Task 3 – Evaluate Core Samples and Seasonal Monitoring**

CEI will evaluate the results of the core samples and monitoring well observations to determine the hydraulic relationship of Furnace Pond and adjacent water sources. These observations will establish a basis to compare future monitoring results and identify the hydrologic connection between the Pond's sediment layer and underlying soils. CEI will conduct seasonal monitoring (4 observations) on all the monitoring wells to evaluate the hydrologic cycle in the Furnace Pond during a one year period.

### **Task 4 – Final Report**

Based on the information generated from Tasks 1-3, CEI will prepare a final report that details how the removal of the sediment could affect the hydrologic relationship with adjacent surface and subsurface water sources. This will include a detailed log of the core samples collected in and around the Furnace Pond, records of seasonal groundwater monitoring observations and historic weather conditions that occurred during the monitoring period. A draft for review will be provided to the Town and final edits will be incorporated into the final report.

## **Cost & Schedule**

Assuming April 2009 Notice to Proceed, we propose the following cost and schedule:

Task 1: Preliminary Engineering	\$2,500	April/May 2009
Task 2: Driller	\$11,800	May 2009
CEI Oversight	<u>\$2,500</u>	May 2009
	\$14,300	
Task 3: Core Analysis and	\$1,600	June 2009
Seasonal Monitoring	\$1,600	September 2009
	\$1,600	December 2009
	<u>\$1,600</u>	March 2010
	\$6,400	
Task 4: Final Report	\$3,800	April 2010

This work can be completed using a lump sum payment method for the total amount of \$27,000 in accordance with the above task breakdown and the attached Standard Terms and Conditions. Tasks will be billed on a monthly basis, based upon percent completion by task.

If this agreement meets with your approval, please indicate your acceptance by signing both copies and returning one to me. Please feel free to call Matthew Lundsted of my staff at 800-725-2550 ext. 305 if you have any questions or wish to discuss this matter.

Sincerely,

COMPREHENSIVE ENVIRONMENTAL INC.

ACCEPTED:

**-DRAFT-**

Eileen Pannetier  
President

By:

## Standard Contract Form For Engineering And Consulting Lump Sum Agreement

These Terms and Conditions, together with CEI's Letter Agreement, make up the Agreement between CEI and you, the Client named in the Letter Agreement.

### **1. Scope of Services**

CEI shall provide professional design and engineering services for the Client in all aspects of the project to which this Agreement applies, shall serve as the Client's professional design, consulting and engineering representative for the project and shall give professional consultation and advice to the Client during the performance of services herein described in the letter agreement to which this Standard Contract Form is attached.

### **2. Standard of Care**

CEI will perform the services with the degree of skill and care ordinarily exercised by qualified professionals performing the same type of services at the same time under similar conditions in the same or similar locality. The foregoing standard of care is in lieu of all other standards and warranties, express or implied, including warranties of marketability or fitness for a particular purpose. Client will notify CEI with reasonable specificity of any deficiencies in the services within 30 days of discovery but in no event later than 120 days after substantial completion of the services, and Client will give CEI a reasonable opportunity to correct the deficiencies.

### **3. Payment**

Except as otherwise stated in the Proposal, Client will compensate CEI for the services on a lump sum basis including labor, expenses and taxes. CEI will submit invoices periodically as the work is completed, and payment will be due within 30 days from the invoice date. If Client disputes any portion of an invoice, Client will notify CEI in writing with specificity and pay the undisputed portion within 30 days from the invoice date.

Any change in the Scope of Services or alteration or modification of the work to be performed shall be expressly authorized and approved by the Client in writing. In the event of any such approval, and authorization by the Client, the Contract Price as shown in the attached Letter Agreement shall be altered as mutually agreed upon by the Client and CEI.

### **4. Schedule of Performance**

The services of CEI are to commence as soon as practicable after the execution of the Agreement. The services shall be undertaken and completed in such a sequence as to assure their expeditious completion in the light of the purposes of the Agreement.

If, however, without fault of CEI, the performance of all or any part of the work is suspended, delayed or interrupted by an act of the Client, by the Client's failure to act within a time specified or by any occurrence beyond CEI's control, then an equitable adjustment will be made by the Client.

### **5. Personnel**

CEI represents that in the performance of its obligations hereunder, it will perform in accordance with generally accepted engineering practices. CEI now has or will obtain all personnel required to perform the services under this Agreement within the required completion dates. All personnel in the work shall be fully qualified. CEI shall provide the Client with the names and contact numbers of the Principal-in-Charge, and the Project Manager.

The Client acknowledges that the services may entail risk of personal injury and property damage that cannot be avoided, even with the exercise of due care. The Client also acknowledges that the environmental and geotechnical conditions can vary from those encountered at the times and locations of explorations and data collection, and that the limitation on available data may result in some level of uncertainty with respect to the interpretation of these conditions, despite due professional care. CEI, therefore, cannot guarantee specific results such as the identification of all contamination or other geotechnical or environmental conditions or problems and their resolution.

### **6. Subconsultants**

CEI now has or will obtain all Subconsultants required to perform the services under this Agreement within the required completion dates.

### **7. Responsibilities of the Client**

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The Client will designate an authorized representative to act as contact. The Client agrees to perform the following services in support of and as complementary to the undertakings of CEI:

- A. Provide all available information as to the requirements of the Project.
- B. Place at CEI's disposal all available information pertinent to the Project, including previous reports and other relevant data.
- C. Furnish to CEI available relevant data prepared by others for the Client. Relevant data may include, but not be limited to information related to hazardous materials or other environmental or geotechnical conditions at the sites, information and/or plans related to underground services, conduits, pipes, tanks and other facilities and obstructions at the sites, property boundaries, easements, right-of-way, topographic and utility surveys and property descriptions, zoning and deed restrictions and other special data. CEI is entitled to reasonably rely on this information and documentation.
- D. The Client grants CEI permission to enter the site to perform the services. Should access to non-Client owned property be necessary, the Client shall represent and warrant that the Client has granted permission for CEI to perform the services, and the Client will provide reasonable verification on request.
- E. Furnish CEI in a timely manner with copies of pertinent correspondence relating to the Project.

### 8. Site Restoration

Although CEI will act to limit damage to landscaping, paving, systems and structures at the site, Client acknowledges that some damage may occur even with the exercise of due care, and Client agrees to compensate CEI for any restoration it is asked to perform unless otherwise indicated in the proposed Scope of Services.

### 9. Underground Facilities

CEI will contact local governmental authorities and private firms who coordinate underground utility information, and will review plans and information they or Client provide. CEI will not be liable for any damage to underground services or structures not accurately identified in such plans and information, and Client agrees to indemnify CEI against all liabilities and costs arising out of such damage and its repair, except to the extent caused by CEI's negligence.

### 10. Lab Tests and Samples

CEI is entitled to rely on the results of laboratory tests using generally accepted methodologies. CEI may dispose of samples in accordance with applicable laws 30 days after submitting test results to Client unless Client requests in writing for them to be held longer or to be returned to Client, in which case Client will compensate CEI for storage beyond 30 days and/or shipping.

### 11. Hazardous Materials

Before any hazardous or contaminated materials are removed from the site, Client will sign manifests naming Client as the generator of the waste (or, if Client is not the generator, Client will arrange for the generator to sign). Client will select the treatment or disposal facility to which any waste is taken. CEI will not be the generator or owner of, nor will it possess, take title to, or assume legal liability for, any hazardous or contaminated materials at or removed from the site. CEI will not have responsibility for or control of the site or of operations or activities at the site other than its own. Unless otherwise stated in the Scope of Services, CEI will not undertake, arrange for or control the handling, treatment, storage, removal, shipment, transportation or disposal of any hazardous or contaminated materials at or removed from the site, other than any laboratory samples it collects or tests.

### 12. Limits on CEI's Responsibility

CEI will not be responsible for the acts or omissions of Contractors or others at the site, except for its own Subconsultants and employees. CEI will not supervise, direct or have control over or the authority to stop any Contractor's work, nor shall CEI's professional activities nor the presence of CEI or its employees and Subconsultants be construed to imply that CEI has authority over or responsibility for the means, methods, techniques, sequences or procedures of construction, for work site health or safety precautions or programs, or for any failure of Contractors to comply with contracts, plans, specifications or laws. Any opinions by CEI of probable costs of labor, materials, equipment or services to be furnished by others are strictly estimates and are not a guaranty that actual costs will be consistent with the estimates.

### 13. Documents and Information

All documents, data, calculations and work papers prepared or furnished by CEI are instruments of service and will remain CEI's property. Designs, reports, data and other work product delivered to Client are for Client use only, for the limited purposes

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disclosed to CEI. Any delayed use, use at another site, use on another project, or use by a third party will be at the user's sole risk, and Client agrees to indemnify and defend CEI against any liabilities resulting therefrom.

### 14. Confidentiality: Subpoenas

Information about this Agreement and CEI's services, and information Client provides to CEI regarding Client business and the site, will be maintained in confidence and will not be disclosed to others without Client consent, except as CEI reasonably believes is necessary (a) to perform its services, (b) to comply with professional standards to protect public health, safety and the environment, and (c) to comply with laws and court orders. CEI will make reasonable efforts to give Client prior notice of any disclosure under (b) or (c) above. Information available to the public and information acquired from third parties without a breach of duty will not be considered confidential. Client will reimburse CEI for responding to any subpoena or governmental inquiry or audit related to the services, at CEI's standard rates then in effect.

### 15. Insurance

During performance of the services, CEI will maintain workers compensation, commercial general liability, automobile liability, professional liability, and Consultant's environmental liability insurance in the following minimum amounts:

- (a) Workers Compensation - Statutory
- (b) General Liability - \$4,000,000 aggregate, \$2,000,000 per occurrence
- (c) Automobile Liability - \$1,000,000 per occurrence and aggregate
- (d) Consultant's Environmental Liability (Professional Errors and Omissions and Consultant's Pollution Liability) - \$2,000,000 aggregate, \$1,000,000 per occurrence.
- (e) Umbrella Liability - \$1,000,000 per occurrence and aggregate

CEI will furnish certificates of such insurance upon request. CEI will purchase project specific insurance at Client request provided it is commercially available and Client pays the premium.

### 16. Indemnification

Client and CEI agree to hold each other harmless, indemnify, and defend each party and its affiliates and Subconsultants and their employees, officers, directors and agents against all claims, suits, fines and penalties, including mandated cleanup costs, attorneys' fees and

other costs of settlement and defense, which claims, suits, fines, penalties or costs arise out of or are related to this Agreement or the services, except to the extent they are caused by the indemnified party's negligence or willful misconduct.

### 17. Limitation of Liability

To the fullest extent permitted by law and notwithstanding anything else in this Agreement to the contrary, the aggregate liability of CEI and its affiliates and Subconsultants and their employees, officers, directors and agents (collectively referred to in this paragraph as "CEI") for all claims arising out of this Agreement or the services is limited to \$50,000 or, if greater, the compensation received by CEI under this Agreement.

Client may elect to increase the limit of liability for damages up to \$100,000 if Client does the following: indicate below that Client elects to increase the limit to one of the levels designated below and pay the additional fee shown opposite the increased level, payment to be made simultaneously with the execution of this Agreement.

The additional charge serves as consideration for our undertaking the greater risk involved in performing the services for Client under an increased limit of liability for damages above \$50,000.

<u>Limit of Liability for Damages</u>	<u>Additional Fee</u>	<u>Client Must Initial</u>
\$75,000	\$500	_____
\$100,000	\$1,000	_____

Client agrees that Client payment of the additional fee does not constitute a charge for placement of additional insurance.

This limitation of liability applies to all injuries, damages, claims, losses, expenses and defense costs, whether based in contract, negligence, strict liability, statutory, warranty, trespass, indemnity, misrepresentation or any other theory of liability, except intentional misconduct, collectively hereinafter "Claim". If the Claim is covered and the Insurer acknowledges coverage under CEI's commercial general liability or automobile liability insurance policy, which exceeds this limitation of liability, CEI's liability will be increased to the extent of the limits outlined in Article 15 above. Any claim will be deemed waived unless received by CEI within three years of substantial completion of the services or, if shorter, the applicable statute of limitations period.

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CEI will not be liable for lost profits, loss of use of property, delays, or other special, indirect, incidental, consequential, punitive, exemplary or multiple damages. CEI will not be liable to Client or the site owner for injuries or deaths suffered by CEI's or its Subconsultants' employees.

**18. Disputes**

All disputes between Client and CEI shall be subject to non-binding mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, the amount of time or money claimed, and requiring that the matter be mediated within forty-five (45) days of service of notice. The mediation shall be administered by the American Arbitration Association in accordance with their most recent Construction Mediation Rules, or by such other person or organization as the parties may agree upon. No action or suit may be commenced unless mediation has occurred but did not resolve the dispute, or unless a statute of limitation period would expire if suit were not filed prior to such forty-five (45) days after service of notice.

**19. Miscellaneous**

This Agreement shall be governed by Massachusetts law. The above terms and conditions regarding Limitation of Liability and Indemnification shall survive the completion of the services under this Agreement and the termination of the contract for any cause. Any amendment to this Agreement must be in writing and signed by both parties. This Agreement supersedes any contract terms, purchase orders or other documents issued by Client. These Terms and Conditions shall govern over any inconsistent terms in the Letter Agreement. If these Terms and Conditions have been provided to Client, Client verbal authorization to commence services constitutes Client acceptance of them. The provisions of this Agreement are severable; if any provision is unenforceable it shall be appropriately limited and given effect to the extent it is enforceable. Headings in these Terms and Conditions are for convenience only and do not form a part of the agreement. Nothing in this Agreement shall be construed to give any rights or benefits to third parties. CEI is an Equal Opportunity/Affirmative Action Employer.