



*Environmental Engineers  
& Hydrogeologists*

June 8, 2020  
File No. 2020-034A

Mr. Benjamin Frost  
Town of Warner  
Planning Board Chairman  
5 East Main Street  
PO Box 265  
Warner, NH 03278

Re: Work Scope and Budget Estimate  
Technical Assistance Services  
Site Plan Review  
Proposed Comet, LLC Commercial Development  
Tax Map 34, Lots 4-1 & 4-2  
9 Route 103 West  
Warner, New Hampshire

Dear Mr. Frost:

Aries Engineering, LLC (Aries) is pleased to submit this work scope and budget estimate to provide technical assistance services (services) to the Town of Warner Planning Board (WPB) regarding an application for site plan review for a commercial development proposed by Comet, LLC of Wilmington, Massachusetts (applicant).

Aries understands that the applicant proposes the new construction of a one-story retail building and a one-story drive-through building with common utilities on two separate parcels identified as Lots 4-1 and 4-2 on Warner Tax Map 35 (site) on Route 103 in Warner, New Hampshire.

## **WORK SCOPE**

---

The work scope objective is to conduct a review of the site plan application and provide general comments regarding stormwater management and potential impacts to the adjacent Warner River, site wetlands, and floodplain, which extends onto the site parcels. Aries will also assist the WPB in evaluating proposed site traffic flow, including the potential for interconnection with adjacent parcels, as well as with the NHDOT right-of-way.

As part of our services, Aries will evaluate the site plan application and prepare a brief letter report summarizing our comments. Aries will base the report and conclusions solely on the described services. Aries' report will include recommendations for additional work, if appropriate. The findings and conclusions of Aries' assessment report will be based on our professional judgment after a review of limited information.

The budget estimate for Aries' application review and report preparation is \$2,000. This budget estimate includes an allowance for limited discussions with WPB representatives to

discuss the report and attendance at one WPB meeting, if requested. If WPB wishes to conduct additional discussions authorized beyond an approximate one to two-hour allowance, Aries will charge for these additional services in accordance with the attached Fee Schedule.

### **BUDGET ESTIMATE AND BASIS OF BILLINGS**

---

The total budget estimate for the services described in this work scope is \$2,000 for Aries' services and expenses. The proposed budget estimate does not include, or anticipate, outside subcontractor costs.

Project billings will be based on accrued time and expenses in accordance with the attached Fee Schedule. Aries will bill WPB on a biweekly basis as project work progresses. Aries will not exceed the budget estimate without your authorization. You will be notified of conditions that require an increase in the budget estimate as soon as they become evident. The estimate is not a guaranteed contract amount, however, and it is possible that the total cost of completing the project will exceed the estimate.

### **SCHEDULE**

---

Aries will begin work upon your verbal authorization.

### **CONDITIONS OF ENGAGEMENT**

---

Conditions of Engagement are described in the attached Statement of Terms and Conditions.


### **ACCEPTANCE**

---


This work scope and budget estimate may be accepted by signing and returning a copy of the attached signature page by email or fax to this office. This work scope, Fee Schedule, and Statement of Terms and Conditions constitutes the entire agreement between Aries and the Warner Planning Board.

Please contact me at (603) 228-0008 if you have any questions regarding this proposal.

Sincerely,  
Aries Engineering, LLC

  
George C. Holt, P.G.  
Principal Hydrogeologist

GCH:kh

  
Kathryn A. Ward, P.E.  
Principal Engineer

Attachments: Fee Schedule  
Signature Page  
Statement of Terms and Conditions



### FEE SCHEDULE

The Fee Schedule, set forth herein, is incorporated by reference in the Proposal for Services, dated June 8, 2020, File No. 2020-034A, directed to Town of Warner, Planning Board ("Client"). These rates are valid until the end of the current calendar year. Aries shall have the right to increase the rates each year effective January 1 of the applicable year. Aries shall limit any rate increase under an existing contract to no more than ten percent per year.

Principal Engineer/Principal Hydrogeologist	\$175/hour
Senior Engineer II/Senior Hydrogeologist II Senior Environmental Scientist II/Risk Assessor II/ Senior Occupational Health & Safety Specialist II	\$140/hour
Senior Engineer I/Senior Hydrogeologist I Senior Environmental Scientist I/Senior Risk Assessor I/ Senior Occupational Health & Safety Specialist I	\$125/hour
Engineer IV/Hydrogeologist IV/Environmental Scientist IV Risk Assessor IV/Occupational Health & Safety Specialist IV	\$115/hour
Engineer III/Hydrogeologist III/Environmental Scientist III Risk Assessor IV/Occupational Health & Safety Specialist III	\$110/hour
Engineer II/Hydrogeologist II/Environmental Scientist II Risk Assessor II/Occupational Health & Safety Specialist II	\$ 95/hour
Engineer I/Hydrogeologist I/Environmental Scientist I Risk Assessor I/Occupational Health & Safety Specialist I	\$ 85/hour
Technician III	\$ 82/hour
Technician II	\$ 80/hour
Technician I	\$ 75/hour
GIS Analyst	\$100/hour
Draftsman/CAD	\$ 75/hour
Account Technician I	\$ 65/hour
Technical Intern	\$ 55/hour
Clerical	\$ 60/hour
Outside Services and Expenses	Cost plus 15%

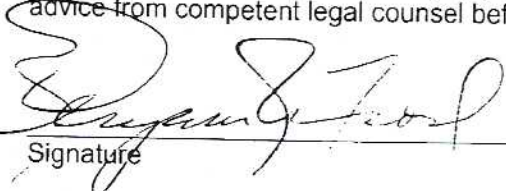
These rates will be charged for time worked on the project and travel time from Aries' office to the job site or meeting site and return. The Fee Schedule rates do not apply to depositions, court testimony, expert witness services and consulting expert services. Rates for these services will be provided to the client upon request.



SIGNATURE PAGE

This proposal, File No. 2020-034A, dated June 8, 2020, and the Statement of Terms and Conditions attached, are accepted by Town of Warner, Planning Board as evidenced by the execution hereof, and such a person so executing the same on behalf of Town of Warner, Planning Board does hereby warrant full authority to act for, in the name of, and on behalf of Town of Warner, Planning Board (Client).

The Terms and Conditions referred to in this proposal contain very important limitations of liabilities and detail important responsibilities and liabilities of the parties. Therefore, in the event a copy of the Terms and Conditions is not attached to this proposal, the Client is advised to request a copy of those Terms and Conditions from Aries before signing this proposal. In the event a copy of the Terms and Conditions is not attached, the proposal/contract is still governed by those Terms and Conditions. In the event that the owner/Client does not understand the effect of the contract proposal, including any parts of the Terms and Conditions, Client should seek advice from competent legal counsel before executing this binding contract.

  
\_\_\_\_\_  
Signature

*Chairman*  
\_\_\_\_\_  
Title

*Benjamin D. Frost*  
\_\_\_\_\_  
Print Name

*June 9, 2020*  
\_\_\_\_\_  
Date

for \_\_\_\_\_  
Town of Warner, Planning Board



TERMS AND CONDITIONS  
FOR  
ENGINEERING AND CONSULTING SERVICES

Client: Town of Warner, Planning Board  
Proposal: 2020-034A  
Date: June 8, 2020

Following are the terms and conditions by which Aries Engineering, LLC (Aries) provides engineering and consulting services to its clients. Taken together with our Proposal, they constitute the agreement between Aries and you. Accordingly, before you sign our Proposal and accept these terms and conditions, you should carefully read the entire document (particularly the sections on "Indemnification", "...Deadline to Assert Claims", and "Limitation of Aries' Liability") to be sure its terms are both fully understood and acceptable.

Throughout these terms and conditions, Aries Engineering, LLC is regularly referred to as "Aries" or "we", the previously-referenced Client is referred to as "the Client" or "you", and the subject work is referred to as the "site".

**1. SERVICES TO BE PERFORMED AND CLIENT'S ACKNOWLEDGEMENT OF UNCERTAINTIES IN WORK TO BE PERFORMED** - We agree to provide you with those engineering and/or consulting services which are detailed in our Proposal (the "Services").

While engineers and consultants such as Aries normally have a duty to perform their work with a degree of skill and care generally exercised by qualified environmental engineers and consultants in the same area, and acting under similar conditions at a similar site, it is important that you are aware of and accept, before signing this contract, the uncertainties that exist with this kind of work. Specifically, much of the work we do relates to underground conditions where chemicals and objects may be hidden. You acknowledge and accept that our work, as with all sub-surface work, involves some inherent risk of personal injury and property damage (including, for example, cross-contamination of environmental media such as soil and groundwater) which simply cannot be avoided even with the exercise of due care. You also acknowledge and accept, for example, the uncertainty in obtaining local, state or federal approvals and acknowledge and accept that we cannot (and do not) represent or warrant the outcome of any permitting or approval process. Similarly, we cannot (and do not) warrant the accuracy or completeness of the information provided by others.

You recognize and accept that there are uncertainties related to environmental and geological services, which often require a step-by-step approach, with the need for additional services becoming apparent only after the initial stage of the Services. You also recognize and accept that actual conditions encountered may vary significantly from those anticipated based on existing information, that laws are subject to change, and that the requirements of regulatory authority are often unpredictable. If changed or unanticipated conditions or delays make additional services necessary or result in additional time or costs for us to complete our work, we will promptly notify you and attempt to negotiate changes to our agreement. If we are unable to reach a mutually satisfactory agreement, we will be entitled to terminate the Services and to be fully compensated for Services already performed.

**2. PAYMENT FOR SERVICES** - Unless we have presented a different billing arrangement in the Proposal, you agree to pay Aries for Services rendered according to our standard schedule of rates, and to reimburse us for all of our expenses. Aries reserves the right to increase its standard rates subject to any limitations, if any, contained in the Fee Schedule. Unless this is a lump sum Proposal, we will bill you every two weeks during the course of our work and send you a final invoice on substantial completion of services. Lump sum proposals will be billed as described in the proposal. We will expect payment of our invoices within 30 days of their date.

If you don't agree with any invoice, you must let us know in writing within 10 days of your receipt of the invoice and, in the meantime, pay any undisputed portion of the invoice when due. Overdue payments will bear simple interest at 18% per annum. If you are delinquent on any payments owed Aries on this or any other project, we reserve the right to suspend or terminate the Services, and collect from you all fees and expenses through the termination date. Exercising our right to terminate or suspend will not prevent us from pursuing other rights and remedies, nor will it create any liability of Aries to you. If we are ever in the position of having to collect overdue amounts from you, you will reimburse Aries for all its costs of collection including reasonable attorneys' fees.

If the cost of the services we will be performing for you under the Proposal will be reimbursed from the Oil Discharge and Disposal Cleanup Fund established by NH RSA 146-D, the Fuel Oil Discharge Cleanup Fund established by NH RSA 146-E, the Motor Oil Discharge Cleanup Fund established by NH RSA 146-F, the Gasoline Remediation and Elimination of Ethers Funds established under NH RSA 146-G or the Methyl t-Butyl Ether Remediation Fund (collectively or individually the "Fund"), and if the Proposal provides for direct payment by that Fund to Aries for those services ("Fund Work"), then Aries waives all claims against you for payment for those services and will seek payment solely from the Fund for those specific services and obtain waivers of claims from Aries' subcontractors. For such Fund work only, the other provisions of this Section 2 of these Terms and Conditions regarding payment by you for those specific services shall not apply, and Client agrees that Aries will submit all of its invoices for work performed in rendering the Services (the "Service Invoices") directly to and will receive payment directly from the Fund, as provided by the Fund rules, for the Services performed on behalf of the Client. However, if the Proposal contains a combination of Fund Work and non-Fund Services, Aries does not waive right to payment for the non-Fund Services and Client will be responsible for payment for that portion of the Services. For Fund work, or that portion of the Services that is Fund work, Client agrees that Aries shall submit its Service Invoices directly to the Fund as the "Applicant" (as defined in Odb Rules). However, in the event that the Fund (administered by the Department of Environmental Services "DES"), rejects the Fund application, then Client shall be responsible for all time and expenses of Aries at Aries' normal billing rates, and any of its subcontractors to the date Aries is advised of the rejection. In the event of such rejection, Client may terminate the contract for any further work or authorize Aries and its subcontractors to proceed with the work at Client's expense.

**3. THE CLIENT'S RESPONSIBILITIES** - The project we are undertaking may not be successfully completed without your full cooperation with Aries, and there are some tasks we rely on the Client to perform. You grant us, and our employees, contractors and agents, access to the site where the work is to be performed, and if you don't own the site you will obtain written permission from the owner for us to enter. It is the Client's responsibility to secure the approvals, permits, licenses and consents necessary for performance of the Services. You will also provide us with all documents and other information in your possession or reasonably available to you that are pertinent to this project and this site, including information related to hazardous materials or other environmental or geological conditions at the site. We will be entitled to rely on documents and information you provide unless you let us know otherwise in writing when the material is delivered. Whether or not you have any written information on the following subjects (and you should provide it to us if you do), you must notify us before we begin work of all information known to you or even suspected by you concerning (a) the existence or possible existence at or near the site of any hazardous waste, hazardous substances, petroleum product, pollutants or asbestos ("Waste Material") as defined in the federal Water Pollution Control Act, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Reauthorization Act of 1986, or under the provisions of similar federal, state and local laws or rules; (b) any conditions known to you to exist at or near the site which might represent a potential safety hazard or danger to human health or the environment; or (c) any permit, manifest, title record, or other record of compliance or non-compliance with any federal, state or local laws relating in any way to past or present site environmental conditions including the presence of aboveground storage tanks or underground storage tanks.

You accept the responsibility of notifying federal, state, and local officials of site conditions as required by applicable rules, regulations and laws. You also agree to notify federal, state and local officials of site conditions which may endanger public health, safety or the environment. In the event you fail or refuse to notify appropriate officials of site conditions as required by federal, state or local laws and rules, we have the right to so notify and shall have no liability to you or any other entity for any such reports made in good faith.



**4. HAZARDOUS MATERIALS** - So long as our agreement is in effect, you promise that no Waste Materials will be removed from the site unless and until you sign manifests naming you as the generator of the waste (or, if you are not the generator, you will arrange for the generator to sign). It is the Client's responsibility to select the treatment or disposal facility to which any waste is taken. Aries will not be the generator or owner of, nor will it possess, take title to, or assume legal liability for, any Waste Materials at or removed from the site. Aries will not undertake, arrange for or control the handling, treatment, storage, removal, shipment, transportation or disposal of any Waste Materials at or removed from the site, other than laboratory samples we collect.

**5. LAB TESTS AND SAMPLES** - Aries is entitled to rely on laboratory tests we commission which are conducted using generally accepted methodologies. We will regularly dispose of all water, soil, waste and any other samples we collect at any time after 30 days following the initial submission of our final report to you, and we will charge you for the disposal costs. If you want us to retain samples for a longer period, you may request it in writing and we will comply so long as (a) the extended period of time is reasonable, and (b) you pay in advance (or on request) all applicable shipment and storage charges.

**6. REPORTS AND OTHER DOCUMENTS** - All written reports, audits, or assessments summarizing the Services and/or our findings, prepared by us and delivered to you (a "Report"), are your property, although if you delay in using or implementing a Report, use it with respect to another site or another project, or share it with a third party, you do so at your own risk and will indemnify Aries from any damage that results. We will perform the Services for your exclusive use, so that you are the only party entitled to rely on the results and then only to the extent provided for in these Terms and Conditions. While you may choose to share the results of our work with others who are not a party to our agreement, you shall explain to them that doing so does not create any duty, responsibility or liability of Aries to them, and that under no circumstances will they be considered a party to, or beneficiary of, our agreement. All other internal information used by us in preparing a Report, such as all data, drafts and internal reports, notes, calculations, estimates, and information prepared by Aries in order for us to provide the Services, will remain our sole property. We will generally retain pertinent documents for 3 years following submission of our final Report to you. Such documents will be available to you upon request and copies will be furnished to you after reasonable notice, for the total costs of reproduction.

**7. CONFIDENTIALITY** - Recognizing the importance of confidentiality to both Aries and the Client, we will each strive to maintain in confidence information about this project; particularly, neither of us will disclose to third parties the terms of the Proposal, and Aries will not, without your prior approval, disclose to third parties our Reports, or information about the site, the project, or your business. There are certain exceptions to our undertaking of confidentiality. Information which is in the public domain or is provided to us by third parties does not need to be kept in confidence. Further, there are some circumstances in addition to those mentioned in the last paragraph of Section 3 in which Aries must make disclosure of some or all of this information; among them when Aries believes disclosure is necessary to: (a) perform the Services; (b) comply with professional standards to protect public health, public safety and the environment; and (c) comply with laws and court orders. We will make reasonable efforts to give you prior notice of any disclosures under (b) or (c). You will reimburse Aries for responding to any subpoena or governmental inquiry related to the Services, at Aries' standard rates then in effect, and this obligation will continue even after we complete the Services.

**8. INSURANCE** - During our performance of the Services we will maintain workers compensation insurance, commercial general liability insurance, professional liability insurance, and automobile liability insurance. We will promptly furnish you certificates of insurance on request. We will also consider your written request to purchase project-specific insurance provided it is commercially available and you pay the premium in advance. The existence of insurance or the amounts of that insurance shall not be deemed to increase any of the duties or liabilities of Aries under this contract. That insurance may exist, shall not waive any limitations of liability or caps on liability/damages otherwise stated in these Terms and Conditions.

**9. LIMITATION ON ARIES' LIABILITY** - To the greatest extent allowed by law, Client agrees that Aries' (including any liability, if any, of Aries former, current or future officers, directors, agents, employees, successors and assigns) aggregate liability to Client and others for any and all injuries, claims, demands, losses, expenses or damages, of whatever kind or character (including, but not limited to personal injury and property damage), arising out of or in anyway related to this Contract, the Services or the Site, shall be limited to the greater of fifty thousand dollars (\$50,000) or the total amount of compensation received by



Aries under this contract. This limitation of liability applies even if Aries was negligent or otherwise at fault and thus limits Aries liability (including any liability, if any, of Aries' former, current or future officers, directors, agents, employees, successors and assigns) even for its own negligence or fault.

Client expressly waives any claims against (including any liability, if any, of Aries' former, current or future officers, directors, agents, employees, successors and assigns) Aries beyond the dollar limits specified in this Section. Under no circumstances will Aries be liable for lost profits, loss of use of property, delays, or other special, indirect, incidental, consequential or punitive damages.

**10. ALTERNATIVE DISPUTE RESOLUTION AND DEADLINE TO ASSERT CLAIMS** - Client and Aries agree that they will make a good faith effort to resolve any dispute relating to or arising from this Contract or the Services without litigation. Such efforts shall include, but not be limited to, a meeting(s) attended by each party's representative(s) empowered to resolve the dispute. The parties agree that before either party commences an action against the other party, they will consider the use of alternative forms of dispute resolution, including mediation (or arbitration if both sides agree to arbitrate the dispute). Pending the outcome of such dispute resolution, both parties shall take immediate steps to mitigate any damages. Until such time as the dispute is resolved, Aries reserves the right to suspend its Services hereunder and shall so timely notify the Client.

This section shall not preclude either party from immediately filing suit for injunctive relief if that party reasonably believes such suit is required to prevent irreparable harm. Further, this section shall not prevent either party from filing a civil action if the applicable statute of limitations period (or shorter contractual limitation period) to file suit is soon to expire.

If for any reason you believe or feel that Aries has breached its duties or obligations under or related to this contract, you agree to notify Aries within 30 days of your discovery of the problem (and in no event, later than 120 days after we substantially complete, or stop, our work) and give us a reasonable opportunity to correct the deficiency. If you have not timely satisfied these notice requirements, you agree not to assert any claims or lawsuits against Aries, its (past, present or future) officers, directors or employees for any reason and you waive all other claims.

**11. INDEMNIFICATION AGAINST THIRD PARTY AND OTHER CLAIMS** - Unless the injury is directly caused by our negligence or intentional misconduct, you agree to assume responsibility for and defend, indemnify and hold harmless Aries, its (past, present, future) directors, officers, employees, agents, successors and assigns, from and against any and all claims by you or a successor in interest, or from third party claims against us for damages and costs, liability or expense, whether direct, indirect, economic or consequential, including reasonable attorneys' fees and court and arbitration costs, where such claims against Aries are in any way: (a) related to this project, the site, (including above ground, surface and subsurface related injury, harm or damage of any kind) or our provision of the Services; (b) are based in any way upon the existence, release, removal, remediation, assessment, or study of hazardous materials; or (c) result from the acts, omissions or work of others (including, without limitation, you and your subcontractors).

**12. ADDITIONAL REMEDY** - In addition to our right to terminate services as discussed elsewhere in these terms and conditions, upon any material breach by you of the other terms and conditions of our agreement, we may, at any time, immediately suspend the provision of Services and promptly notify you of the reason. If you fail to remedy the breach within 10 days of the date of our notice, we may elect to terminate Services without waiving any other rights or claims we have.

**13. MISCELLANEOUS TERMS** - This agreement is intended to be governed by and enforceable in accordance with the laws of the State of New Hampshire. The provisions of these terms and conditions are severable. The invalidity of any part of these terms and conditions will not invalidate the remainder. These terms and conditions cannot be modified orally or by any course of conduct, only by a written modification signed by both of us. These terms and conditions take precedence over any inconsistent or contradictory provision contained in any purchase order, proposal, contract, requisition, notice to proceed, or like document you may issue. Neither of us will assign any part of this agreement except with the other's prior written consent, subject to our right to subcontract portions of the Services in the ordinary course of our business.

