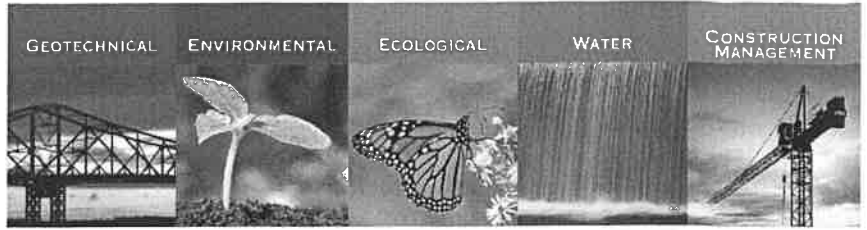
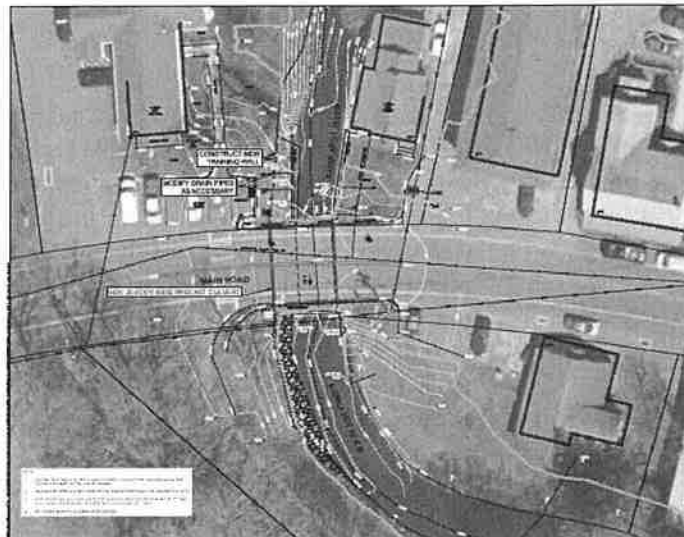




Known for excellence. Built on trust.



Route 23 / Main Road Culvert Replacement Konkapot River Design and Permitting Town of Monterey



Date: September 19, 2022
File No. 01.P000356.16

PREPARED FOR:
Town of Monterey
Monterey, MA

GZA GeoEnvironmental, Inc.
249 Vanderbilt Avenue | Norwood, MA 02062
781-278-3700

28 Offices Nationwide
www.gza.com

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September 19, 2022
File No. 01.P000356.16

Mr. James Hunt
Director of Operations
Town of Monterey Highway Department
P.O. Box 109
Monterey, MA 01245

Re: Route 23 / Main Road Culvert
Design and Permitting
Monterey, MA

Dear Mr. Hunt:

In accordance with our discussions with the Town of Monterey (Town), GZA GeoEnvironmental, Inc. (GZA) is pleased to submit this proposal for assisting the Town with design and permitting of the replacement of the culvert on Route 23 / Main Street over Konkapot River segment which runs through the town center of Monterey. The scope of GZA's work on this phase of the project will include the final design of a pre-cast concrete replacement culvert carrying Route 23 / Main Road over the Konkapot River and the preparation of the identified permit applications. We have developed this scope based on our understanding of the Town's needs and our previous work for the Town under a grant from the State Municipal Vulnerability Preparedness (MVP) program. This proposal has been prepared based on our understanding of the Town's new grant award.

We appreciate the opportunity to continue to work with the Town on this vital project and as agreed look forward to being a part of this team. Please contact the following if you have any questions or comments regarding the contents of our proposal: Chad W. Cox, P.E., Senior Principal, (781) 278-5787, chad.cox@gza.com, at 249 Vanderbilt Ave, Norwood, MA, 02062.

Very truly yours,

GZA GeoEnvironmental, Inc.

Chad W. Cox, P.E.
Principal-in-Charge

David M. Leone, P.E.
Consultant/ Reviewer

Enclosures: GZA Proposal
Terms and Conditions (08/08-Edition/05-9010)



GZA PROPOSAL
Route 23 / Main Road Culvert Replacement Design and Permitting
Konkapot River – Monterey, MA

PROJECT UNDERSTANDING AND APPROACH

The Town of Monterey is seeking to replace the existing culvert carrying Route 23 / Main Road over the Konkapot River. This project is intended to provide numerous benefits, including reduced upstream flooding, replacement of an aging culvert structure, and improved resiliency for critical transportation and water supply infrastructure.

The scope of the currently proposed phase of the project will expand upon the work previously completed by GZA on behalf of the Town, which was supported by an MVP grant. Under that previous phase of the project, a preliminary study for rehabilitation of the culvert was completed. That study included field work at the culvert site such as a topographic site survey, a subsurface investigation, wetlands and stream survey, a hydraulic model of the stream, an alternatives analysis, and a preliminary design of a replacement culvert. The deliverables from this study were a report and a preliminary culvert replacement plan set.

The study completed in the prior phase of the project indicated that the existing corrugated steel pipe arch culvert is showing signs of structural deterioration. The hydraulic study concluded that the existing culvert does not meet certain criteria under the Massachusetts Stream Crossing Standards and is undersized with respect to passing flood flows. The previous grant scope focused on the culvert and the resulting recommendation was for the replacement of the existing culvert with a wider, open-bottomed structure.

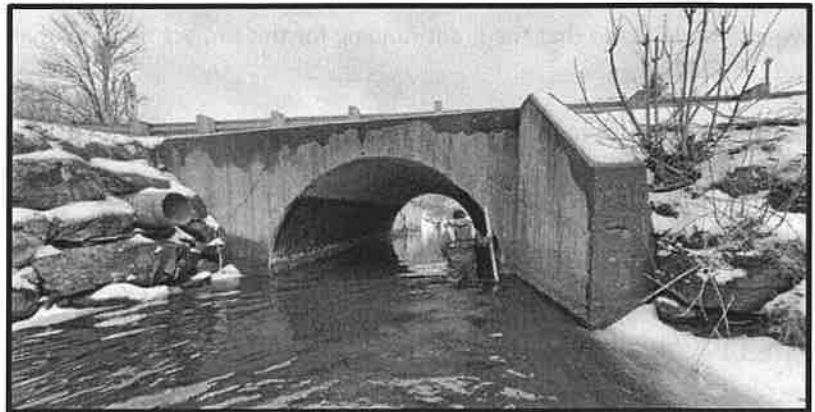


Figure 1 - Main Road Culver over Konkapot River

PROJECT OBJECTIVES

The objective of this phase of the project is to further develop the information and plans necessary for the restoration of segment of the Konkapot River. At the completion of this phase of the project, the following tasks will have been completed:

1. Updating of previous hydraulic modeling to include consideration of the new guidance from the Resilient MA Action Team (RMAT) "Climate Resilience Design Standards and Guidelines" which apply to state-funded projects;
2. Final design of the replacement culvert, including plans and technical specifications;
3. Preparation and submission of specific permit applications associated with the project.



QUALIFICATIONS

GZA GeoEnvironmental, Inc. (GZA) is a multidisciplinary consulting firm offering services in the fields of geotechnical, civil, hydrologic, hydraulic, and environmental engineering, hazardous waste assessment and remediation, water and wastewater engineering, and construction design-related services. GZA is a privately owned corporation. GZA employs over 700 engineers, scientists, and technical support staff in 28 offices. GZA has a Dams/Water Resources Group consisting of over 40 engineers and technical specialists. The GZA team of engineers who would execute the scope of this proposal reside in our Norwood and Springfield, Massachusetts offices.

GZA's extensive, single-source regional expertise in the technical disciplines of civil and geotechnical engineering, hydrology, hydraulics, natural resource management, and emergency preparedness planning allows us to provide our Clients with a complete suite of services. Our depth of experience in drainage structure design and computer modeling in a variety of disciplines allows us to easily integrate and handle all phases of the study and design process.

SCOPE OF WORK

Based on our discussions with you and the objectives of the overall project, we propose the following scope of services for this phase of the work. We have configured the task numbering of our proposal to be consistent with our understanding of the nomenclature used in the MVP grant application (therefore the task numbering is not consecutive.) We also understand that the grant funding for this project requires that certain tasks be completed either before or after June 30, 2023.

Tasks to be completed by June 30, 2023:

Task 1 Project Kick-off, Management, and Reporting

GZA will participate in a virtual project kickoff meeting and up to five additional virtual progress meetings in the first year of the grant term.

Task 3.1 RMAT Modelling Update

In April 2021, a set of Climate Resilience Design Standards and Guidelines were issued by the Resilient Massachusetts Action Team (RMAT) which are intended to provide a consistent recommended basis-of-design across various projects in the Commonwealth considering the following climate parameters: sea level rise and storm surge, extreme precipitation, and extreme heat. These standards are intended to apply to project receiving state funding, such as through grants issued by the MVP program. Under this task, GZA will apply the RMAT Tiered Methodology to Determine Riverine Peak Discharge Criteria – Tier 1 Projects to validate the project design. Previously, GZA estimated the hydrologic conditions and peak flows for various recurrence interval storms using the online USGS StreamStats Application, which estimates peak flows based on regression equations developed for the Commonwealth of Massachusetts by the USGS under the current climate. The intent is to validate that the MassDOT design flood (25-year flood) can be accommodated by the proposed structure and to provide an indication of the changes in future impacts of larger (up to 500-yr) floods. GZA will use its previously developed one-dimensional hydraulic model for this purpose.

Task 3.2 Final Culvert Replacement Design

Under the previous phase of the project, GZA developed a preliminary design for a 25-foot wide, pre-cast concrete box culvert to replace the existing culvert. GZA's work under Task 1 of this phase assumes that the final culvert design will be fundamentally consistent with the preliminary design and that a pre-cast concrete structure will be used. The final design will further refine the design of the structure proposed in the preliminary design plans dated February 2021.



The proposed structure spans over 10 feet and is thus subject to MassDOT design requirements and review (with respect to the structure being classified as a “bridge”) in accordance with MGL Chapter 85, Section 35. This scope was prepared such that culvert design would be submitted for Chapter 85 review. GZA intends to submit the preliminary design, along with the current and proposed supporting analyses of hydrology, hydraulics, scour, structural, and geotechnical issues. The culvert design will then be finalized following MassDOT comments.

Task 3.3 Culvert Plans and Project Manual

Following receipt of comments from MassDOT, GZA will prepare final bid-ready plans for the replacement culvert project. The plans will include provisions for the temporary maintenance of water service during construction and permanent replacement of the water line on the exterior of the culvert structure. GZA will work with the water company on this detail. Note that GZA’s design budget assumes total road closure during the reconstruction of the culvert. This is per the traffic control plan contained in the preliminary plan set.

GZA will prepare a Project Manual for the bidding and construction of the culvert replacement. Technical specifications will reference Standard MassDOT specifications, with supplemental provisions as needed. GZA will either use contract and bidding documents supplied by the Town or will use standard documents procured from the Engineers Joint Contract Documents Committee (EJCDC), supplemented for compliance with Massachusetts Chapter 30 contracting regulations, including information on prevailing wages. Final deliverables for this task will be an electronic copy (.pdf) of the final Project Manual for the culvert replacement (including final plans) and two hard copies.

Task 3.4 Chapter 85 Mass Highway Review

Additional engineering design which will be executed as part of the Chapter 85 review process by MassDOT are as follows: 1) road embankment stability analysis to be appended to the Geotechnical Report; 2) Foundation design including potential ground improvements and concrete strip footings for the pre-cast culvert, to be appended to the Geotechnical Report; 3) scour analysis (following methodology outlined in Hydraulic Engineering Circular No. 18 (HEC-18), per the MassDOT Bridge manual) and a “no-rise” evaluation to be appended to the Hydraulics Report. The hydraulics report, including the scour analysis, will present final conditions assuming no change to the downstream Old Stone Dam. Note that as is typical, the structural design of the specified three-sided pre-cast concrete culvert structure and pre-cast training walls will be performed by the pre-cast culvert supplier. A design stamped by a MA Professional Engineer will be required to be submitted by the supplier and will be provided to MassDOT following award of the construction contract. GZA will prepare technical materials to be submitted to MassDOT for Chapter 85 review.

Tasks to be completed between July 1, 2023 and June 30, 2024:

Task 6.1 Wetlands Protection Act – Notice of Intent

GZA will prepare a Notice of Intent (NOI) under the Massachusetts Wetlands Project Act (WPA) for submission to the Monterey Conservation Commission. The NOI package will include a description and delineation of wetland resource areas based on the field work completed by GZA under our previous phase of work.

Task 6.2 Section 404 USACE Permit Application

GZA will prepare a submittal to the US Army Corps of Engineers under the Massachusetts General Permits which apply to Section 404 of the Clean Water Act. Because this is a culvert replacement project which proposes a new culvert structure which is intended to comply with the Massachusetts Stream Crossing Standards, GZA intends to submit a Self-Verification Form (SVF) as an eligible activity under GPs 1 and 14.



Task 6.3 Mass Historic Commission Project Notification Form

GZA will prepare and file a Project Notification Form with the Mass Historical Commission. No site-specific archeological studies are proposed.

ASSUMPTIONS

- We understand that public outreach for the project will be done by others.
- GZA’s budget has assumed meetings with the project team via phone or teleconference.
- GZA’s budget has assumed a total of three in-person meetings in Monterey in support of permitting, public hearings, or other project needs.
- GZA has budgeted \$700 for estimated permit fees and advertising.
- No additional field work will be required.
- FEMA Flood Insurance Rate Map and/or Floodway changes are not included in our scope of work.
- MEPA review is not required for this project:
 - This permit replacement project falls under MEPA jurisdiction based on State money being involved. GZA has reviewed the MEPA review thresholds and found the following to be the most likely to potentially trigger MEPA review. New fill or structure or Expansion of existing fill or structure, except a pile- supported structure, in a velocity zone or regulatory floodway; [301 CMR 11.03 (3) b 1 e]. The FEMA flood map does not show a floodway but the FIS report does indicate a 16 foot wide floodway at the culvert (basically the width of the culvert.) The proposed culvert is wider than that so would not result in an expanded structure in the regulatory floodway. Therefore we do not believe that MEPA is necessary. GZA also looked for the presence of special listed habitat and did not find such areas within the project area. We also confirmed no EJ areas in close proximity to the site at the time of our review.

SCHEDULE

We are prepared to begin working on the project within one week of receiving notice to proceed. We understand that notice to proceed is contingent upon the Town executing the final MVP contract. We have developed the following schedule based on our understanding of the grant schedule and the assumption that NTP will be provided no later than September 26, 2022.

Task	Est. Start Date	Est. Completion Date
Task 1 – Project Kick-off, Management, and Reporting	Sept. 26, 2022	June 30, 2022
Task 3.1 – RMAT Modelling Update	Sept. 26, 2022	Oct. 21, 2022
Task 3.2 – Final Culvert Replacement Design	Sept. 26, 2022	Dec. 2, 2022
Task 3.3 – Culvert Plans and Project Manual	Oct. 31, 2022	June 16, 2023
Task 3.4 – Chapter 85 Mass Highway Review	Jan. 30, 2023	Apr. 28, 2023
Task 6.1 – Wetlands Protection Act – Notice of Intent	Sept. 4, 2023	June 28, 2024
Task 6.2 – Section 404 USACE Permit Application	Oct. 2, 2023	Mar. 1, 2024
Task 6.3 – Mass Historic Commission Project Notification Form	July 3, 2023	Dec. 1, 2023



GZA has assumed that ongoing COVID health restrictions will stay at or be less restrictive than current levels. If a force majeure situation occurs, the Town will be notified.

COST FOR ENGINEERING SERVICES

Billings will be based on actual accrued time and materials in accordance with our Terms and Conditions and hourly rates listed in our Schedule of Fees included as **Attachment 1**.

TASK	Description	Estimated Budget
1	Project Kick-off, Management, and Reporting	\$5,385
3.1	RMAT Modelling Update	\$5,000
3.2	Final Culvert Replacement Design	\$19,870
3.3	Culvert Plans and Project Manual	\$23,165
3.4	Chapter 85 Mass Highway Review	\$11,580
6.1	Wetlands Protection Act – Notice of Intent	\$11,670
6.2	Section 404 USACE Permit Application	\$3,970
6.3	Mass Historic Commission Project Notification Form	\$2,780
	TOTAL	\$83,420

No meetings, beyond those specifically mentioned above are included. This estimate is based on the anticipated scope of work outlined above which represents our best judgment at this time as to the efforts required to achieve the stated objectives. Distribution of effort between tasks is approximate and may vary. It must be recognized, however, that unforeseen conditions which become evident during the course of the project which may alter or increase the scope of work required. GZA will not exceed the total project budget without notifying DCR. The Town will be informed if work beyond the proposed budget is required.

GZA GeoEnvironmental, Inc. will invoice generally monthly for our services and reimbursable expenses. We will hold our fees at the current rates through June 30, 2024.

CONDITIONS OF ENGAGEMENT

Conditions of engagement are described in the attached standard Terms and Conditions (08/08 Edition/05-9010), which were used in our previous engagement with the Town and are attached herein as Attachment 2. This proposal is valid for 30 days from the date of issuance. A delay in acceptance may affect our ability to meet the schedule outlined above.

ACCEPTANCE

This proposal may be accepted by signing in the appropriate space and returning one copy to us. The executed agreement must be received prior to the initiation of the services described above. Issuance of a purchase order implicitly acknowledges acceptance of the standard Terms and Conditions. This Proposal for Services and Terms and Conditions shall constitute the entire agreement between the parties.


ATTACHMENTS

- Attachment 1: GZA Fee Schedule
- Attachment 2: GZA Terms and Conditions (08/08 Edition/05-9010)



This Contract for Services and the Terms and Conditions are hereby accepted and executed by a duly authorized signatory, who by execution hereof, warrants that he/she has full authority to act for, in the name, and on behalf of Client.

TOWN OF MONTEREY

By:  Title: Select Board, Chair
Monterey, MA

Typed Name: JUSTIN MAKUC Date: 9/28/22



**GZA GEOENVIRONMENTAL, INC.
METRO BOSTON OFFICES**

**MUNICIPAL GOVERNMENT SERVICES
SCHEDULE OF FEES - CALENDAR YEAR 2022**

FOR PROPOSAL FOR SERVICES DATED: September 19, 2022

FILE NO. : 01.P000356.16

LABOR

	<u>Per Hour</u>
CAD/Technical Designer	\$110
Field Technician II	\$102
Field Technician I	\$105
Technical/Administrative Support	\$105
Engineer/Scientist/Geologist II	\$115
Engineer/Scientist/Geologist I	\$125
Assistant Project Manager	\$145
Senior CAD/Technical Designer	\$150
Project Manager/Technical Specialist	\$175
Senior Project Manager/Technical Specialist	\$190
Senior Consultant	\$225
Associate Principal	\$225
Principal	\$250
Senior Principal	\$275
Outside Services and Subcontractors	Cost Plus 10%
Expenses	Cost Plus 10%

The above rates for technical and support personnel will be charged for actual time worked on the project, including time required for travel from company office to job or meeting site and return. For work requiring out-of-town overnight stay, the minimum charge for work on the project will be eight (8) hours per day.

Overtime work by "Non-Exempt" personnel will be billed at 1.5 times the standard rate.

A fifty percent (50%) premium will be added to the above rates for expert witness and other special services.

The above-listed rates are valid for the calendar year in which the work is performed. GZA reserves the right to modify this rate schedule on an annual basis to reflect changes in employee compensation and Client acknowledges that labor rates may change during the execution of this project.

EXPENSES

- *Rental of specialized field or monitoring equipment and vehicle charges based on standard unit prices*
- *Transportation, lodging and subsistence for out-of-town travel*
- *Printing, reproduction, plotting, and wide-format scanning*
- *Express mail and shipping charges*
- *Personal vehicle travel for projects at IRS rates*
- *Long distance, local and cellular telephone, facsimile and postage (via U.S. Postal Service) are included in a flat rate Communication Fee of 3 percent per invoice on labor only*

INVOICES

GZA will submit invoices periodically and payment will be due within 20 days from invoice date. GZA may terminate its services upon 10 days' written notice any time your payment is overdue on this or any other project.



**GZA GEOENVIRONMENTAL, INC.
METRO BOSTON OFFICES**

**MUNICIPAL GOVERNMENT SERVICES
SCHEDULE OF FEES - CALENDAR YEAR 2022**

BUDGETS

The Budget contained within GZA's Proposal represents our estimate of the work involved. Actual charges can vary either upward or downward depending upon many factors. GZA considers a substantial budget variance to be 15% and we will not exceed this variance without notifying Client.

RETAINER

Any retainer specified in GZA's Proposal shall be due prior to the start of services and will be applied to the final invoice for services.



TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES Including Site Investigation, Remediation, Geotechnical, Construction, And Testing

© 2016 by GZA GeoEnvironmental, Inc.

Client ("You"): Town of Monterey

Proposal No: 01.P000356.16

Site: Route 23/Main Rd. Culvert Replacement, Monterey, Massachusetts

These Terms and Conditions, together with GZA's Proposal, make up the Agreement between GZA and you, Client, named above.

BEFORE SIGNING THE PROPOSAL, BE SURE YOU READ AND UNDERSTAND THE PARAGRAPHS ENTITLED "INDEMNIFICATION" AND "LIMITATION OF REMEDIES" WHICH DEAL WITH THE ALLOCATION OF RISK BETWEEN YOU AND GZA.

1. Services. GZA will perform the services set forth in its Proposal and any amendments or change orders authorized by you. Any request or direction from you that would require extra work or additional time for performance or would result in an increase in GZA's costs will be the subject of a negotiated amendment or change order.

2. Standard of Care; Warranties.

- a. GZA 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.
- b. GZA warrants that its construction services will be of good quality, free of faults and defects and in conformance with the Proposal.
- c. **EXCEPT AS SET FORTH IN SUBSECTIONS 2a AND 2b, ABOVE, NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WARRANTY OF MARKETABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IS MADE OR INTENDED BY GZA'S PROPOSAL OR BY ANY OF GZA'S ORAL OR WRITTEN REPORTS.**
- d. GZA assigns to you any manufacturers' warranties of equipment or materials purchased from others, to the extent they are assignable, and your sole recourse will be against the manufacturer. Full risk of loss of materials and equipment will pass to you upon delivery to the Site, and you will be responsible for insuring and otherwise protecting them against theft and damage.

3. Payment.

- a. Except as otherwise stated in the Proposal, you will compensate GZA for the services at the rates set forth in the applicable Proposal, amendment or change order; reimburse its expenses, which will include a communication fee calculated as a percentage of labor invoiced; and pay any sales or similar taxes thereon.
- b. Any retainer specified in GZA's Proposal shall be due prior to the start of services and will be applied to the final invoice for services.
- c. GZA will submit invoices periodically; and payment will be due within 20 days from invoice date. Overdue payments will bear interest at 1½ percent per month or, if lower, the maximum lawful rate. GZA may terminate its services upon 10 days' written notice anytime your payment is overdue on this or any other project and you will pay for all services through termination, plus termination costs. You will reimburse GZA's costs of collecting overdue invoices, including reasonable attorneys' fees.

4. Your Responsibilities.

- a. Except as otherwise agreed, you will secure the approvals, permits, licenses and consents necessary for performance of the services. If you are the owner or operator of the Site, you will provide GZA with all documents, plans, information concerning underground structures (including but not limited to utilities, conduits, pipes, and tanks), information related to hazardous materials or other environmental or geotechnical conditions at the Site and other information that may be pertinent to the services or, if you are not the owner or operator of the Site, you agree to make reasonable efforts to obtain these same documents and provide them to GZA. Unless otherwise indicated in writing, GZA will be entitled to rely on documents and information you provide.
- b. If you use the services of a construction manager at the Site, you agree to use best and reasonable efforts to include in your agreement(s) with the construction contractor provisions obligating the latter:
 - (i) to indemnify and hold harmless, to the fullest extent permitted by law, you and GZA, its officers, employees and principals, for or on account of any claims, liabilities, costs and expenses, including attorneys' fees, arising out of or relating to the design or implementation of construction means, methods, procedures, techniques, and sequences of construction, including safety precautions or programs, of the contractor, or any of its subcontractors or any engineer engaged by it;
 - (ii) to name you and GZA as additional insureds under general liability and builder's risk insurance coverages maintained by the contractor, or any of its subcontractors; and



(iii) to require that all of its subcontractors agree and be bound to the obligations set forth in (i) and (ii) above.

c. In the event that you are unable to secure such provisions in the agreement(s) with the construction contractor, you shall promptly notify GZA and GZA shall have the opportunity to negotiate with you reasonable substitute risk allocation and insurance indemnities and protections.

5. Right of Entry; Site Restoration. You grant GZA and its subcontractor(s) permission to enter the Site to perform the services. If you do not own the Site, you represent and warrant that the owner has granted permission for GZA to enter the Site and perform the services; you will provide reasonable verification on request; and you will indemnify GZA for any claims by the Site owner related to alleged trespass by GZA or its subcontractors. GZA will exercise reasonable care to limit damage to landscaping, paving, systems and structures at the Site that may occur and you agree to compensate GZA for any restoration it is asked to perform, unless otherwise indicated in the Proposal.

6. Underground Facilities. GZA's only responsibility under this Section will be to provide proper notification to the applicable state utility "Call-Before-You-Dig" program. You further agree to assume responsibility for and to defend, indemnify and hold harmless GZA with respect to personal injury and property damages due to GZA's interference with subterranean structures including but not limited to utilities, conduits, pipes, and tanks:

- (i) that are not correctly shown on any plans and information you or governmental authorities provide to GZA; or
- (ii) that are not correctly marked by the appropriate utility.

7. Reliance. The services, information, and other data furnished by you shall be at your expense, and GZA may rely upon all information and data that you furnish, including the accuracy and completeness thereof. You acknowledge that the quality of the services provided by GZA is directly related to the accuracy and completeness of the information and data that you furnish to GZA. **GZA'S REPORTS ARE PREPARED FOR AND MADE AVAILABLE FOR YOUR SOLE USE. YOU ACKNOWLEDGE AND AGREE THAT USE OF OR RELIANCE UPON THE REPORT OR THE FINDINGS IN THE REPORT BY ANY OTHER PARTY, OR FOR ANY OTHER PROJECT OR PURPOSE, SHALL BE AT YOUR OR SUCH OTHER PARTY'S SOLE RISK AND WITHOUT ANY LIABILITY TO GZA.**

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

9. GZA Professionals. GZA employees or consultants may act as licensed, certified or registered professionals (including but not limited to Professional Engineers, Licensed Site or Environmental Professionals, or Certified Industrial Hygienists collectively referred to in this section as "GZA Professionals") whose duties may include the rendering of independent professional opinions. You acknowledge that a federal, state or local agency or other third party may audit the services of GZA or other contractor/consultant(s), which audit may require additional services, even though GZA and such GZA Professionals have each performed such services in accordance with the standard of care set forth herein. You agree to compensate GZA for all services performed in response to such an audit, or to meet additional requirements resulting from such an audit, at the rates set forth in the applicable Proposal, amendment or change order.

10. Hazardous Materials; GZA "Not a Generator". Before any hazardous or contaminated materials are removed from the Site, you will 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). You will select the treatment or disposal facility to which any waste is taken. GZA 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. GZA will not have responsibility for or control of the Site or of operations or activities at the Site other than its own. GZA 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. You agree to defend, indemnify and hold GZA harmless for any costs or liability incurred by GZA in defense of or in payment for any legal actions in which it is alleged that GZA is the owner, generator, treater, storer or disposer of hazardous waste.

11. Limits on GZA's Responsibility. GZA will not be responsible for the acts or omissions of contractors or others at the Site, except for its own subcontractors and employees. GZA will not supervise, direct or assume control over or the authority to stop any contractor's work, nor shall GZA's professional activities nor the presence of GZA or its employees and subcontractors be construed to imply that GZA 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 GZA of probable costs of labor, materials, equipment or services to be furnished by others are strictly estimates and are not a guarantee that actual costs will be consistent with the estimates.

12. Changed Conditions.

a. You recognize the uncertainties related to environmental and geotechnical services, which often require a phased or exploratory approach, with the need for additional services becoming apparent during the initial services. You also recognize that actual conditions encountered



may vary significantly from those anticipated, that laws and regulations are subject to change, and that the requirements of regulatory authorities are often unpredictable.

- b. If changed or unanticipated conditions or delays make additional services necessary or result in additional costs or time for performance, GZA will notify you and the parties will negotiate appropriate changes to the scope of services, compensation and schedule.
- c. If no agreement can be reached, GZA will be entitled to terminate its services and to be equitably compensated for the services already performed. GZA will not be responsible for delays or failures to perform due to weather, labor disputes, intervention by or inability to get approvals from public authorities, acts or omissions on your part, or any other causes beyond GZA's reasonable control, and you will compensate GZA for any resulting increase in its costs.

13. Documents and Information. All documents, data, calculations and work papers prepared or furnished by GZA are instruments of service and will remain GZA's property. Designs, reports, data and other work product delivered to you are for your use only, for the limited purposes disclosed to GZA. 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 without any liability to GZA. Any technology, methodology or technical information learned or developed by GZA will remain its property. Provided GZA is not in default under this Agreement, GZA's designs will not be used to complete this project by others, except by written agreement relating to use, liability and compensation.

14. Electronic Media. In accepting and utilizing any drawings, reports and data on any form of electronic media generated by GZA, you covenant and agree that all such electronic files are instruments of service of GZA, who shall be deemed the author and shall retain all common law, statutory law and other rights, including copyrights. In the event of a conflict between the signed documents prepared by GZA and electronic files, the signed documents shall govern. You agree not to reuse these electronic files, in whole or in part, for any purpose or project other than the project that is the subject of this Agreement. Any transfer of these electronic files to others or reuse or modifications to such files by you without the prior written consent of GZA will be at the user's sole risk and without any liability to GZA.

15. Confidentiality; Subpoenas. Information about this Agreement and GZA's services and information you provide to GZA regarding your business and the Site, other than information available to the public and information acquired from third parties, will be maintained in confidence and will not be disclosed to others without your consent, except as GZA 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. GZA will make reasonable efforts to give you prior notice of any disclosure under (b) or (c) above. Information available to the public and information acquired from third parties will not be considered confidential. You will reimburse GZA for responding to any subpoena or governmental inquiry or audit related to the services, at the rates set forth in the applicable Proposal, amendment or change order.

16. Insurance. During performance of the services, GZA will maintain workers compensation, commercial general liability, automobile liability, and professional liability/contractor's pollution liability insurance. GZA will furnish you certificates of such insurance on request.

17. Indemnification. You agree to hold harmless, indemnify, and defend GZA and its affiliates and subcontractors and their employees, officers, directors and agents (collectively referred to in this paragraph as "GZA") against all claims, suits, fines and penalties, including mandated cleanup costs and 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 GZA's negligence or willful misconduct.

18. Limitation of Remedies.

- a. To the fullest extent permitted by law and notwithstanding anything else in this Agreement to the contrary, the aggregate liability of GZA and its affiliates and subcontractors and their employees, officers, directors and agents (collectively referred to in this paragraph as "GZA") for all claims arising out of this Agreement or the services is limited to \$50,000 or, if greater, 10% of the compensation received by GZA under this Agreement.
- b. You may elect to increase the limit of liability by paying an additional fee, such fee to be negotiated prior to the execution of this Agreement.
- c. Any claim will be deemed waived unless received by GZA within one year of substantial completion of the services.
- d. GZA will not be liable for lost profits, loss of use of property, delays, or other special, indirect, incidental, consequential, punitive, exemplary, or multiple damages.
- e. GZA will not be liable to you or the Site owner for injuries or deaths suffered by GZA's or its subcontractors' employees.
- f. You will look solely to GZA for your remedy for any claim arising out of or relating to this Agreement, including any claim arising out of or relating to alleged negligence or errors or omissions of any GZA principal, officer, employee or agent.

19. Disputes.

- a. All disputes between you and GZA shall be subject to non-binding mediation.



- b. 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.
- c. The mediation shall be administered by the American Arbitration Association in accordance with its most recent Construction Mediation Rules, or by such other person or organization as the parties may agree upon.
- d. 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.

20. Miscellaneous.

- a. Massachusetts law shall govern this Agreement.
- b. The above terms and conditions regarding Limitation of Remedies and Indemnification shall survive the completion of the services under this Agreement and the termination of the contract for any cause.
- c. Any amendment to these Terms and Conditions must be in writing and signed by both parties.
- d. Having received these Terms and Conditions, your oral authorization to commence services, your actions, or your use of the Report or Work Product constitutes your acceptance of them.
- e. This Agreement supersedes any contract terms, purchase orders or other documents issued by you.
- f. Neither party may assign or transfer this Agreement or any rights or duties hereunder without the written consent of the other party.
- g. Your failure or the failure of your successors or assigns to receive payment or reimbursement from any other party for any reason whatsoever shall not absolve you, your successors or assigns of any obligation to pay any sum to GZA under this agreement.
- h. These Terms and Conditions shall govern over any inconsistent terms in GZA's Proposal.
- i. 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.
- j. The covenants and agreements contained in this Agreement shall apply to, inure to the benefit of and be binding upon the parties hereto and upon their respective successors and assigns.