

December 14, 2020

Mr. Ryan Ferrara
Town of Boxborough
Town Administrator
29 Middle Road
Boxborough, MA

Re: **Boxborough Public Safety Facility
Geotechnical Services
70-72 Stow Road - Feasibility Study
Boxborough, MA**
(Pare Proposal No. 19140.02)

Dear Mr. Ferrara:

In accordance with our recent discussion, we are pleased to have the opportunity to submit this proposal for professional engineering services for the above referenced project. Outlined herein is a brief description of your project, our proposed Scope of Services, and the method and basis of compensation for our services.

PROJECT DESCRIPTION

The Town of Boxborough requires professional civil engineering services to provide a geotechnical services for the feasibility study for a municipal public safety facility located at 70-72 Stow Road in Boxborough, MA. The property under consideration consists of two parcels, highlighted on the attached Exhibit A.

SCOPE OF SERVICES

Basic Services

The following tasks shall be considered basic services for this project:

Task #101 – Feasibility Level Geotechnical Investigation

Based on the assumed scope of development and site conditions, Pare has developed the following scope of services for a feasibility-level geotechnical subsurface investigation. It should be noted that Pare has scoped a subsurface investigation to broadly assess the suitability of the Site, and that a subsequent geotechnical subsurface investigation will be required for design of proposed structures.

A. The scope of services has been developed on the following assumptions:

1. The layout and design of the proposed development is not yet known.
2. The feasibility level investigations will be conducted for the Site in the location of potential future addition to the existing structure as shown in the conceptual building layout provided by HKT.
3. Pare will engage the services of a drilling or excavation subcontractor to perform the excavations.





4. The investigation borings will be backfilled on completion. In pavement areas, the borings will be asphalt-patched. No additional landscaping, seeding, etc. will be performed.

B. The following tasks are proposed:

1. Prior to commencing the subsurface exploration program, Pare will file a Locate Request Form with Dig Safe and coordinate the locating of private utilities on the site.
2. Pare will provide field observation and coordination for the investigation program. Field personnel will observe drilling conditions, visually identify the soil samples, classify rock cores (if any), and record groundwater levels (if encountered) during the advancement of the explorations.
3. Pare will subcontract a drilling contractor to undertake borings to preliminarily characterize the subsurface conditions at the proposed site. Two (2) borings will be advanced to 25 feet or until refusal on bedrock (whichever is shallower) within the footprint of the building approved by HKT. Standard Penetration Tests (SPT) will be performed in accordance with ASTM D1586 continuously in the upper 10 feet of the borings, then at standard 5-foot sampling intervals thereafter. Up to 5 feet of rock core will be retrieved from each boring. The final scope of the explorations will be reviewed with the Architect when the building pad site has been selected.
 - a. This Task assumes that the boring locations specified can be readily accessed, and that the Town will provide written access to the design team to conduct these borings.
4. Pare will observe up to one day of test pit excavation located across the Site to provide subsurface soil characteristics, and estimation of depth to ledge. Test pit logs summarizing Pare's observations will be prepared for reference. It is anticipated and budgeted that the Town will provide the services of a backhoe and operator to perform the test pits.
5. Pare will prepare typed logs of the explorations. The logs will include estimated surface elevations based upon available topographic mapping, identification of soil strata, sample identifiers and data, field test results and groundwater levels.
6. No laboratory testing will be performed.
7. Upon completion of the subsurface investigation, Pare will prepare a feasibility level geotechnical letter report for the project. The report will provide a description of the site and the investigation methods used, summarize the results of the investigation, and give recommendations for further subsurface investigations.

SERVICES PROVIDED BY THE OTHERS

The Architect or Owner shall provide the following services and information for this project:

- Architectural drawings of the proposed building to be used for site design;
- Access to the Site as necessary;
- Landscape Architectural Services;
- Mechanical, Plumbing, Electrical, and Fire Protection Engineering Services;
- Professional land surveying services, including topographic and boundary surveys;



Mr. Ryan Ferrara

(3)

December 14, 2020

- Construction Cost Estimating Services;
- Survey and Legal Description of Property Boundaries and Easements, if needed;
- Traffic Analysis and Engineering beyond those included herein;
- Site lighting and photometrics; and
- Hazardous Materials investigation (Phase I, Phase II).

OUTSIDE SERVICES

A drilling subcontractor licensed in Massachusetts will be used for the borings associated with Task #101.

ADDITIONAL SERVICES

Other services required by the Client that are not part of the Scope of Services, as described above, shall be considered Additional Services. Additional Services shall be furnished by Pare or obtained from others by Pare if requested in writing by the Client. The Client shall pay Pare for Additional Services in accordance with rates and charges agreed to in writing prior to authorization by the Client. Included as Additional Services will be, but are not limited to, the following:

- Any services not expressly described in the Scope of Services;
- Design and/or coordination of offsite improvements;
- Attendance at meetings or site visits other than identified above;
- Engineering and Design services beyond the level identified above;
- Construction administration services; and
- Those items specifically identified as out of service above.

PERIOD OF SERVICE

The time periods for performance of the services as set forth in the Scope of Services shall be in accordance with the project schedule agreed to by all parties. Pare anticipates that this project shall be completed within 90 calendar days of written authorization to proceed and that authorization to proceed will be provided by January 1, 2021.

Services will commence upon written authorization to proceed and information required to perform our services. Additional services may materially add to the time required to complete the work on the Project. Pare will be entitled to an equitable adjustment in the Period of Service as a result of services added.



Mr. Ryan Ferrara

(4)

December 14, 2020

BASIS OF COMPENSATION AND METHOD OF PAYMENT

Basic Services

Pare Corporation shall be paid a Lump Sum Fee of **Eight Thousand Nine Hundred Fifty Dollars (\$8,950.00)** for Basic Services as described above. The fee breakdown for the basic services are as follows:

Task #101 Feasibility Level Geotechnical Evaluation	\$ 8,950.00
Lump Sum Total	\$ 8,950.00

Rates for personnel categories and for reimbursable expenses are shown on the attached Schedule of Fees.

Invoices for services rendered and expenses incurred will be submitted monthly and are due and payable within thirty (30) days of the date of the invoice. Invoices not paid within thirty (30) days shall be subject to a one and one-half percent (1.5%) per month interest charge. In addition, for contracts more than thirty days in arrears for payment, Pare may, with seven (7) days written notice, suspend services.

This represents our best judgment at this time as to the effort required to achieve the stated objectives. Should you change the Scope of Services or corresponding level of effort upon which this proposal is based an increase or decrease in charges may result. You will be notified of any change regarding an increase in charges and we will not exceed the recommended budget without your approval, nor will we be required to work beyond the approved budget.

Pare reserves the right to renegotiate or adjust our fee accordingly if our Proposal for Service is not accepted within a 60-day period. The above stated Scope of Service constitutes our Proposal for Professional Services in connection with this Project. Should you accept this Proposal, we will enter into a separate form of agreement that will supersede this Proposal and constitute the final, complete and integrated agreement between us.

ACCEPTANCE

This Proposal may be accepted by signing in the appropriate spaces below and returning one copy to us. Your signing of this letter constitutes your acceptance of all the paragraphs included within the Statement of Terms and Conditions, a copy of which is attached and made a part of this Agreement and serves as our notice to proceed. Please do not hesitate to consult with us concerning any questions regarding this Agreement and the attached Terms and Conditions.

We look forward to working with you on this project. If you have any questions, please contact us at your convenience.

Sincerely,

Lance Hill, PE
Managing Engineer



Mr. Ryan Ferrara

(5)

December 14, 2020

Enclosures

Exhibit A – Site Location

Exhibit B – Schedule of Fees, dated December 14, 2020

Exhibit C - Terms and Conditions dated December 14, 2020

This Proposal for Services and Statement of 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 of, and on behalf of the HKT Architects.

TOWN OF BOXBOROUGH.

By _____ Title _____

Typed Name: _____ Date _____

BOXBOROUGH
MIDDLESEX COUNTY
MASSACHUSETTS



**ASSESSORS MAP
FY 2019**

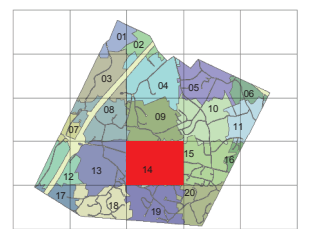
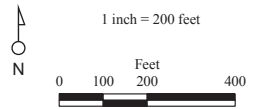
This map is for assessment purposes only and may not be used for property conveyances.

The property boundaries displayed in this map are revised to January 1, 2018.

Printed: March 2018.

Map Legend

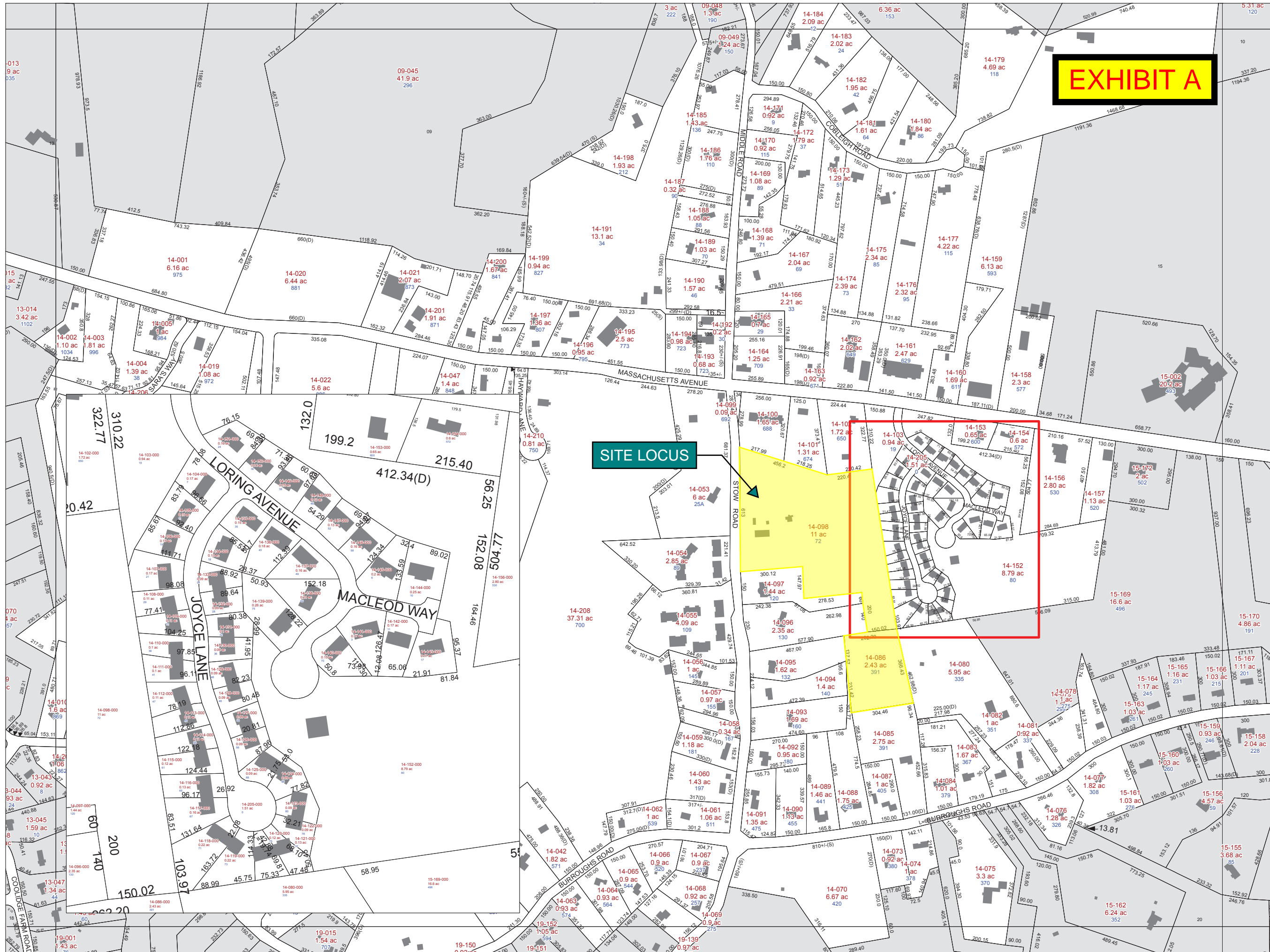
- Railroad
- Building
- Parcels
- 01-010** Map-Lot Number
- 30 ac** Land Area in Acres - Source: Assessors CAMA Database
- 205** Street Number - Source: Assessors CAMA Database



Prepared by:



MAP 14 INSET



SCHEDULE OF FEES

For Proposal for Services, dated December 14, 2020
(Pare Proposal No. 19140.01)

LABOR:

Engineer I	\$ 110.00/Hour
Engineer II	\$ 125.00/Hour
Project Engineer	\$ 150.00/Hour
Senior Project Engineer	\$ 175.00/Hour
Managing Engineer	\$ 190.00/Hour
Principals & Officers	\$ 225.00/Hour
Environmental Scientist	\$ 95.00/Hour
Senior Environmental Scientist	\$ 120.00/Hour
Principal Environmental Scientist	\$ 155.00/Hour
Resident Project Representative	\$ 100.00/Hour
Senior Resident Project Representative	\$ 125.00/Hour
CADD Operator	\$ 100.00/Hour
Senior CADD Operator/Designer	\$ 115.00/Hour
Engineering Technician	\$ 100.00/Hour
Senior Engineering Technician	\$ 115.00/Hour
Clerical/Office Personnel	\$ 75.00/Hour

REIMBURSABLE EXPENSES:

Mileage (at Federal Standard Rate)	\$ 0.575/Mile
Printing/Copying Wide Format (in-house)	\$ 0.15/Square Foot
Photocopying (in-house)	\$ 0.10/Copy
Outside Services and Out-of-Pocket Expenses	Cost plus 10%

The above rates for technical and support personnel will be charged for actual time worked on the project. In addition, there will be charges for time required for travel from company office to job or site, and return.

For expert and material witness services, including preparation, associated with any actual or potential litigation, mediation, arbitration, or similar proceeding, a fifty percent (50%) premium will be added to the above rates.

Overtime worked by non-exempt, non-professional employees will be charged at a rate of one and one-half times the rates shown above for all time worked in excess of 8 hours per day.





STATEMENT OF TERMS AND CONDITIONS

Attached to and made a part of the Agreement for Professional Services dated December 14, by and between the Town of Boxborough and Pare Corporation, (Pare) in respect of the Professional Engineering Services – Boxborough Public Safety Building Feasibility Geotechnical Services project described therein.

SECTION 1. SERVICES TO BE PROVIDED

1.1 Pare hereby agrees to provide Client with the services set forth in the Proposal for Services and under the terms and conditions set forth herein.

1.2 This Agreement, once executed, will become effective upon Pare's receipt of written authorization to proceed. The attendant Proposal for Service is subject to renegotiation if acceptance by this Agreement is not received within sixty (60) days.

1.3 Client acknowledges that work shall proceed under the defined scope of services only upon receipt by Pare of a signed Agreement (this Agreement) and, if required, a retainer payment. The retainer amount shall be held by Pare and shall be applied against the final invoice. In the event the amount of the retainer exceeds the final invoice, Pare shall refund the balance with the final invoice. If the final invoice exceeds the retainer, the Client shall promptly remit the amount due.

1.4 If CLIENT authorizes changes in the scope, extent, or character of the PROJECT, then the time for completion of Pare's services, and the rates and amounts of Pare's compensation shall be adjusted equitably.

1.5 If Pare's services include the performance of any services during the construction phase of the Project,

a. it is understood that the purpose of any such services (including any visits to the site) will be to enable Pare to better perform the duties and responsibilities assigned to and undertaken by it as an experienced and qualified design professional, and to provide Client with a greater degree of confidence that the completed work of the Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s). Neither the professional activities of Pare, nor the presence of Pare or his or her employees and subconsultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. Pare personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. Client agrees that the General Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in Client's agreement with the General Contractor. Client also agrees that Client, Pare and Pare's consultants shall be indemnified and shall be made additional insured under the General Contractor's general liability insurance policy.



b. (*Shop Drawing Review*) it is understood that Pare shall review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. Pare's review shall be conducted with reasonable promptness while allowing sufficient time in Pare's judgment to permit adequate review. Review of a specific item shall not indicate that Pare has reviewed the entire assembly of which the item is a component. Pare shall not be responsible for any deviations from the Construction Documents not brought to the attention of Pare in writing by the Contractor. Pare shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

c. it is understood that providing a Resident Project Representative (RPR) is a separately defined service in addition to those described above and that the use of a RPR is to assist in providing a more extensive observation of the Contractor's work. If RPR services are to be provided, compensation shall be as set forth in Exhibit C, Compensation for RPR, and the Duties, Responsibilities, and Authority of the RPR shall be as set forth in Exhibit D. The furnishing of such RPR services will not limit, extend, or modify Pare's responsibilities or authority except as expressly set forth in Exhibit C and Exhibit D.

SECTION 2. BILLING AND PAYMENT

2.1 Client agrees to pay Pare in accordance with the rates and charges set forth in the attached Proposal for Services. Invoices for services rendered and expenses incurred will be submitted monthly by Pare to Client. All such invoices shall be due and payable upon receipt. Additionally, in the case of a lump sum method of compensation, invoices will be based upon Pare's estimate of the proportion of the total services actually completed at the time of billing.

2.2 All invoices shall be paid in full prior to the filing by Pare of any documents with a governmental agency having jurisdiction over this Project.

2.3 In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be promptly paid.

2.4 If Client fails to make any payment due Pare for services and expenses within thirty (30) days after the invoice date of Pare's statement therefor, the amounts due Pare shall include an interest charge at the rate of one and one-half percent (1.5%) per month from said thirtieth day, and in addition, Pare may, after giving seven (7) days written notice to Client, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses. Unless Pare receives payment in full within seven (7) days of the date of the notice, the suspension shall take effect without further notice. Payments on account will be credited first to interest and then to principal. In the event of a suspension of services, Pare shall have no liability to Client for delay or damage caused Client because of such suspension of services.

2.5 In the event of termination by Client under Section 17, Client shall remain liable for and shall promptly pay Pare the full amount for all services rendered by Pare to the date of termination and all termination costs together with interest on all overdue accounts in accordance with the foregoing rate and



attendant attorneys' fees and costs of collection. No failure by Pare to exercise any right hereunder shall operate as a waiver nor preclude Pare from exercising any other right.

2.6 If Client fails to make payment to Pare in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination by Pare.

2.7 In the event legal action is necessary to enforce the payment provisions of this Agreement, Pare shall be entitled to collect from Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by Pare in connection therewith and, in addition, the reasonable value of Pare's time and expenses spent in connection with such collection action, computed at Pare's prevailing fee schedule and expense policies.

2.8 Payment of invoices is in no case subject to unilateral discounting or set-offs by Client, and payment is due regardless of suspension or termination of this Agreement by either party.

2.9 Payment of invoices to Pare is the sole responsibility of the signatory of this Agreement and is not subject to third party agreements.

SECTION 3. ADDITIONAL SERVICES

3.1 Services required by Client, which are not part of those described in the Proposal for Services, shall be considered Additional Services. Additional Services shall be furnished by Pare, or obtained from others by Pare, if requested in writing by Client. Client shall pay Pare for Additional Services in accordance with rates and charges agreed to in writing prior to authorization by Client.

3.2 Requests for additional services and any associated fee adjustment must be authorized in writing before additional services can begin. Oral directives by Client authorizing Additional Services will be confirmed in writing by Pare. Client shall pay Pare for orally directed Additional Services furnished by Pare in accordance with Pare's current Schedule of Fees unless other rates and charges for compensation are agreed to prior to the completion of the authorized Additional Services. Pare reviews its Schedule of Fees annually and reserves the right to adjust its schedule accordingly.

SECTION 4. REIMBURSABLE EXPENSES

4.1 Normal reimbursable expenses are in addition to the fee for services. Internal expenses incurred and allocated to the project will be billed to Client in accordance with our fee proposal and/or our attendant Schedule of Fees. Outside expenses incurred and allocated to the project shall be billed at rate of 1.1 times the amount expended. Reimbursable expenses include, but are not limited to, expenses associated with the Project such as: travel including transportation, meals and lodging; printing, copying and handling of documents; computer charges including computer-aided design; film and processing; telephone calls and other communications charges; postage and delivery; equipment for tests; and securing approval of authorities having jurisdiction over the Project and not specified as part of the fee.

SECTION 5. CLIENT'S RESPONSIBILITIES

5.1 Pare shall indicate to Client the information needed for rendering of services hereunder. Client shall provide to Pare all criteria and full information as to Client's requirements for the Project and such other information as is available to Client and Client's consultants and contractors, and Pare shall be entitled to rely upon the accuracy and completeness thereof. Client recognizes that it is impossible for Pare to assure



the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions that may have occurred in assembling the information Client is providing.

5.2 Client shall designate in writing a person to act as Client's representative with respect to the services to be rendered; shall examine and respond promptly to Pare's submissions; and shall give prompt written notice to Pare whenever he observes or otherwise becomes aware of any defect in the work.

5.3 Client shall arrange for access to and make all provisions for Pare to enter upon public and private property as required for Pare to perform his services.

5.4 Client acknowledges that invoices must be kept current for services to continue. If Client fails to pay any invoice due to Pare within 30 days of the date of the invoice, Pare may, without waiving any other claim or right against Client, suspend services under this Agreement until Pare has been paid in full all amounts due Pare and/or any of its Consultants and Subcontractors (See Paragraph 2.4). Sealed plans, final documents, reports and attendance at meetings/hearings will not be provided unless payment for services is current. Client acknowledges Pare's right to suspend services and withhold plans and documents, as provided above if payments are not current. If services are suspended for 30 days or longer, upon resuming services Pare shall be entitled to payment for expenses incurred in the interruption and resumption of services. If services are suspended for 90 days or longer, Pare shall be entitled to payment for expenses incurred in the interruption and resumption of its services, and fees for remaining services shall be equitably adjusted.

SECTION 6. INSURANCE

6.1 Pare is covered by Workers' Compensation Insurance, Commercial General Liability Insurance, Automobile Liability Insurance and Professional Liability Insurance. We will furnish information and certificates upon request.

SECTION 7. STANDARD OF CARE

7.1 Services provided by Pare under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the same locality.

SECTION 8. USE OF DOCUMENTS

8.1 All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media prepared or furnished by Pare under this Agreement are instruments of service in respect to this Project, and Pare shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of Pare) whether or not the Project is completed. Client shall not rely in any way on any Document unless it is in printed form, signed or sealed by Pare or one of its Consultants.

8.2 A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any



conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

8.3 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

8.4 When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator. If any information is provided in electronic format, Client recognizes that such plans, documents or other information recorded on or transmitted as electronic media, including CADD documents ("Electronic Documents") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the electronic documents are provided to Client for informational purposes only and not as record documents.

8.5 Client may make and retain copies of Documents for information and reference in connection with use on the Project by Client. Pare grants Client a license to use the Documents on the Project, extensions of the Project, and other projects of Client, subject to the following limitations: (1) Client acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Pare, or for use or reuse by Client or others on extensions of the Project or on any other project without written verification or adaptation by Pare; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Pare, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Pare or to Pare's Consultants; (3) Client shall indemnify and hold harmless Pare and Pare's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Pare; (4) such limited license to Client shall not create any rights in third parties.

8.6 If Pare at Client's request verifies or adapts the Documents for extensions of the Project or for any other project, then Client shall compensate Pare at rates or in an amount to be agreed upon by Client and Pare.

SECTION 9. OPINIONS OF PROBABLE COST

9.1 Since Pare has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, his opinions of probable project cost and construction cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Pare cannot and does not guarantee nor make warranty, expressed or implied, that proposals, bids, or actual project or construction cost will not vary from opinions of probable cost prepared by him. Similarly, since Pare has no control over building operation and/or maintenance costs, Pare cannot and does not guarantee that the actual building or system operating or maintenance costs will not vary from any estimates given by Pare.



SECTION 10. CERTIFICATIONS

10.1 Client shall not request certifications and/or affidavits that would require knowledge or services beyond the scope of this Agreement and/or beyond the professional qualifications and engineering expertise of Pare. Pare shall not be required to sign any documents, no matter by whom requested, that would result in Pare having to certify, guaranty or warrant the existence of conditions whose existence Pare cannot ascertain. Any certification provided by Pare shall be so provided based on Pare's knowledge, information and belief subject to the preceding sentence, and shall be given in Pare's professional opinion consistence with the Standard of Care. Pare shall be compensated for any work necessary to verify project compliance with regulatory standards for purposes of such certification.

10.2 The proposed language of any such certificates, affidavits or certifications requested of Pare or Pare's consultants shall be submitted to Pare for review and approval at least fourteen (14) days prior to expected execution.

SECTION 11. LIMITATION OF LIABILITY

11.1 To the maximum extent permitted by law, Client agrees to limit Pare's liability to Client for or on account of all claims and/or damages of any nature whatsoever caused by or arising out of Pare's performance of its services, such that the total aggregate liability of Pare for any and all claims and/or damages of any nature whatsoever, arising out of the performance of Pare's services on the Project, shall not exceed \$50,000 or Pare's total fee for services rendered on the Project, whichever is greater.

11.2 Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any special, indirect, incidental, or consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by Client or Pare, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

SECTION 12. SERVICES MADE NECESSARY BY LACK OF CONTRACTOR PERFORMANCE

12.1 It is Client's responsibility to hire the Contractor, and it is the Contractor's responsibility to install and complete fully operable systems. Client agrees to pay Pare 3.20 times Direct Labor Costs for all its trouble-shooting work due to Contractor's inability to achieve satisfactory operation. Client shall hold harmless, defend and indemnify Pare, its officers, agents, employees and consultants, from any and all liabilities, claims, damages and suits arising out of the negligence of Client or its agents, or liability due to the negligence of any contractor(s) performing any portion of the work and supplying any materials, or any other parties, except for any liability of Pare, or its consultants, due to the sole negligence of Pare, or its consultants.

SECTION 13. HAZARDOUS WASTE/ASBESTOS/CONTAMINANTS

13.1 In consideration of the substantial risks to Pare involving or relating to the actual or threatened release, escape or discharge of hazardous waste, asbestos and/or other contaminants, it is agreed that Client to the fullest extent permitted by law, shall release and indemnify and hold harmless Pare and its consultants, agents and employees, from and against all claims, damages, losses and expenses, direct and indirect, including but not limited to attorneys' fees and defense costs, arising out of or resulting from the



performance of any services by Pare, or claims against Pare related to, involving or arising out of hazardous waste, asbestos or other contaminants.

SECTION 14. INDEMNIFICATION

14.1 Pare agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Pare's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom Pare is legally liable.

14.2 The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Pare, its officers, directors, employees and subconsultants (collectively, Pare) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

14.3 Neither the Client nor Pare shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

SECTION 15. SUSPENSION OF SERVICES

15.1 If the Project is suspended by Client, or the services are suspended by Pare in accordance with Paragraph 2.4 and/or Paragraph 5.4 of this Agreement for more than thirty (30) calendar days in the aggregate, Pare shall be compensated for services performed and charges incurred prior to receipt from Client or issuance by Pare of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. Depending on the duration of the stoppage, an additional adjustment may be necessary to cover wage increases and general escalation. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the Project is suspended for more than ninety (90) calendar days in the aggregate, Pare may, at his or her option, terminate this Agreement upon giving notice in writing to Client.

SECTION 16. DISPUTE RESOLUTION

16.1 Any disputes arising out of or relating to this Agreement, including disputes under termination, shall first be submitted to nonbinding mediation unless the parties mutually agree otherwise.

16.2 The parties further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

16.3 On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representative and shall meet within ten (10) days after the service of notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of the meeting. Should the parties themselves be unable to agree on a resolution of the dispute, then the parties shall proceed with mediation in accordance with the mediation rules of the American Arbitration Association. The cost of mediation shall be borne equally by both parties.



16.4 Any dispute not settled by agreement of the parties shall be decided by litigation in a court of competent jurisdiction.

SECTION 17. TERMINATION

17.1 Either Client or Pare may terminate this Agreement at any time with or without cause upon giving the other party ten (10) calendar days prior written notice. Client shall within thirty (30) calendar days of termination pay Pare for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.

SECTION 18. TITLES

18.1 The titles in this Agreement are for general reference only and are not part of the Agreement.

SECTION 19. GOVERNING LAW

19.1 The laws of the State of Rhode Island will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in the courts of the State of Rhode Island.

SECTION 20. INTEGRATION

20.1 This Agreement comprises the final and complete agreement between Client and Pare. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Amendments to this Agreement, except as otherwise provided herein, shall not be binding unless made in writing and signed by both Client and Pare.

SECTION 21. SEVERABILITY AND SURVIVAL

21.1 Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and Pare shall survive the completion of the services hereunder and the termination of this Agreement.

SECTION 22. SUCCESSORS AND ASSIGNS

22.1 Client and Pare each binds himself and his partners, successors, executors, administrators, assigns, and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.

22.2 Neither Client nor Pare shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 23.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility



under this Agreement. Nothing contained in this paragraph shall prevent Pare from employing such independent consultants, associates, and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

22.3 Nothing herein shall be constructed to give any rights or benefits hereunder to anyone other than Client and Pare.

SECTION 23. ENTIRE AGREEMENT

23.1 This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no verbal understandings, statements, or stipulations bearing upon the meaning or effect of this Agreement. This Agreement may only be modified or amended by a written instrument executed by both parties, except as may be otherwise provided herein.

(END)