

June 25, 2024

Mayor Melinda E. Barrett
City of Haverhill
City Hall
4 Summer Street
Haverhill, Massachusetts 01830

Re: Designer Contract Amendment 11

Dear Mayor Barrett:

Attached is Dore + Whittier's contract amendment number 11 (ProPay Code: 0204-0300) for the Dr. Albert B. Consentino Middle School project.

Included is the Dore + Whittier Extra Service Request #19 for the Geo-technical construction monitoring services.

The total of this amendment is \$99,000.00.

As design work is ongoing, we respectfully request that the District execute this agreement at the earliest opportunity. Please let us know if you have any questions.

Sincerely,



A. Michel Carroll III, MCPPO
Project Director
Mike.Carroll@collierseng.com
Mobile: 781-844-0098

cc: Dr. Margaret Marotta-Smith, Superintendent
Steven Bucuzzo, Purchasing Director/CPO
Dr. Richard Poor, Principal
Suzanna Yeung, Colliers Project Leaders

ATTACHMENT C

PARTICIPATION SCHEDULE FOR DESIGNER CONTRACTS BY THE SUPPLIER DIVERSITY OFFICE

This form shall be submitted to the Owner by the Designer upon execution of the Contract for Designer Services attached hereto.

Owner City of Haverhill

Project No: 21-0818

<u>Name of Company</u>	<u>Description of Work</u>	<u>M/WBE</u>	<u>Dollar Value Participation</u>
1. Engineers Design Group	Structural	MBE	\$ 946,500.00
2. AKAL Engineering	Plumbing / Fire Protection	MBE	\$ 333,500.00
3. Nitsch Engineering	Civil & Permitting Services	WBE	\$ 357,000.00
4. TerraINK	Landscape Architects	WBE	\$ 200,000.00
5. Andelman & Lelek	Sustainability	WBE	\$ 15,000.00
6. Nitsch Engineering	Survey	WBE	\$ 83,850.00

Dollar Value of MBE Commitment: \$ 1,280,000.00

Dollar Value of WBE Commitment: \$ 655,850.00

Total Dollar Value Commitment: \$ 1,935,850.00

Fee for Basic Services

& Amendments \$ 13,583,755

DESIGNER CERTIFICATION

The undersigned certifies under the penalties of perjury that (1) it intends to subcontract with the above listed firms for the identified work and dollar amounts and (2) certifies that he/she has read the terms and conditions of the Designer Contract with regards to MBE/WBE participation and is authorized to bind the Designer to the commitment set forth above.

Date 6/25/24

e of Architect/Engineer
Digitally signed by Donald M
Walter
horize
DN: C=US,
E=dwalter@doreandwhittier.com,
O="Dore + Whittier", CN=Donald
M Walter
Ad
Date: 2024.06.25 11:21:25-04'00'

ATTACHMENT F

CONTRACT FOR DESIGNER SERVICES

AMENDMENT NO. 11

WHEREAS, the City of Haverhill ("Owner") and Dore + Whittier Architects, (the "Designer") (collectively, the "Parties") entered into a Contract for Designer Services for the Dr. Albert B. Consentino Middle School (Project Number 201801280100) at the Consentino Middle School on 685 Washington Street, Haverhill, MA 01832. "Contract"; and

WHEREAS, effective as of June 10, 2024, the Parties wish to amend the Contract:

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Amendment, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. The Owner hereby authorizes the Designer to perform services for the Design Development Phase, the Construction Phases, and the Final Completion Phase of the Project, pursuant to the terms and conditions set forth in the Contract, as amended.
2. For the performance of services required under the Contract, as amended, the Designer shall be compensated by the Owner in accordance with the following Fee for Basic Services:

Fee for Basic Services:	Original Contract	After this
	Including Amd 10	Amendment 11
Feasibility Study Phase	<u>\$169,050</u>	<u>\$ 169,050</u>
Schematic Design Phase	<u>\$330,950</u>	<u>\$ 330,950</u>
Design Development Phase	<u>\$3,595,800</u>	<u>\$ 3,595,800</u>
Construction Document Phase	<u>\$3,595,800</u>	<u>\$ 3,595,800</u>
Bidding Phase	<u>\$359,580</u>	<u>\$ 359,580</u>
Construction Phase	<u>\$4,195,100</u>	<u>\$ 4,195,100</u>
Completion Phase	<u>\$239,720</u>	<u>\$ 239,720</u>
Extra Service over the Basic	<u>\$983,755</u>	<u>\$ 1,082,755</u>
Additional Survey Services	<u>\$0</u>	<u>\$ 0</u>
Reimbursable Services	<u>\$15,000</u>	<u>\$ 15,000</u>
Total Fee	<u>\$13,484,755</u>	<u>\$13,583,755</u>

This Amendment is a result of: The approval of D+W ESR 19 procurement services of for Geotechnical Construction Monitoring Services for a NTE of \$99,000.00.

3. The Construction Budget shall be as follows:

Original Budget: \$125,097,100

Amended Budget \$125,097,100

4. The Project Schedule shall be as follows:

Original Schedule: As per "CMS Schedule – Mod 5-8" by Colliers Project Leaders, dated 8/11/2022

Amended Schedule: As per "Haverhill Consentino MS Schedule 1.25.2024" by Colliers Project Leaders, dated 1/25/2024

5. This Amendment contains all of the terms and conditions agreed upon by the Parties as amendments to the original Contract. No other understandings or representations, oral or otherwise, regarding amendments to the original Contract shall be deemed to exist or bind the Parties, and all other terms and conditions of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the Owner, with the prior approval of the Authority, and the Designer have caused this Amendment to be executed by their respective authorized officers.

OWNER

Mayor Melinda E. Barrett
(print name)

Mayor of the City of Haverhill
(print title)

By _____
(signature)

Date _____

DESIGNER

Donald M. Walter, AIA
(print name)

Principal
(print title)

By _____
(signature)

Date _____

Donald M Walter

Digitally signed by Donald M
Walter
DN: C=US,
E=dwalter@doreandwhittier.com,
O="Dore & Whittier", CN=Donald
M Walter
Date: 2024.06.25 11:21:52-04'00'

May 30, 2024

Steve Dorrance
Haverhill City Hall
4 Summer Street
Suite #100
Haverhill, MA 01830



PROJECT: Haverhill Consentino Middle School
Dore + Whittier Project No.: 21-0818
SUBJECT: **Extra Service Request #19**
Geo-technical Construction Monitoring Services

Dear Steve,

Please accept this fee proposal for the construction monitoring services which will be performed by Dore and Whittier's geo-technical consultant Sanborn Head & Associates, Inc. Please see the attached fee proposals that outline the scope for these tasks. **The fee noted below is a not to exceed without authorization fee. The budgeted estimated fee is noted in the attached fee proposal.**

Sanborn Head - Not to Exceed	\$ 90,000.00
D+W 10% Mark-up - Not to Exceed	\$ 9,000.00
TOTAL - Not to Exceed	\$99,000.00

All other agreements of the prime contract remain unchanged.

Sincerely,

DORE + WHITTIER **Accepted:**
Architects • Project Managers


Michele Barbaro-Rogers AIA, NCARB, MCPPO, CPTED
Project Manager

CC: DW, DAG, LPD, KG, File

Haverhill School District
Steve Dorrance
City of Haverhill


Date: 6/14/24

Ms. Michele Barbaro-Rogers, AIA, MCPPO, NCARB, CPTED
Dore + Whittier
260 Merrimac Street, Bldg. 7
Newburyport, Massachusetts 01950

Project No. 5034.03
May 30, 2024

Re: Proposal for Supplementary SWM Testing & Construction Monitoring Services- Rev. 05
Dr. Albert B. Consentino Middle School and Silver Hill Elementary School
685 Washington Street
Haverhill, Massachusetts

Dear Michele:

Sanborn, Head & Associates, Inc. (Sanborn Head) is pleased to submit this revised proposal to Dore + Whittier (Client) to provide supplementary stormwater management testing, construction monitoring and construction administration services for the new Dr. Albert B. Consentino Middle School and Silver Hill Elementary School in Haverhill, MA (Site).

SCOPE OF SERVICES

Sanborn Head's objective is to provide part-time construction monitoring and construction administration services during the foundation subgrade preparation at the new Dr. Albert B. Consentino Middle School and Silver Hill Elementary School locations. Additionally, Sanborn Head will provide supplementary stormwater management consulting services in selected areas once the existing Consentino Middle School is demolished.

Task 1 – Construction Monitoring

Sanborn Head will provide part-time construction monitoring services as requested to support the project. Our construction monitoring services will include:

- Consentino Building Foundation Subgrade
- Consentino Site Retaining Wall Subgrade
- Silver Hill Retaining Wall Subgrade

Sanborn Head understands a detailed construction schedule is not currently available. Based on conversations between Sanborn Head and Dore + Whittier, we assume the following estimate for a representative for construction monitoring services:

Scope Item	Estimated Duration
Consentino Building Foundation Subgrade	20 hrs/week x 12 weeks = 240 hours
Consentino Site Retaining Wall Subgrade	20 hrs/week x 1 weeks = 20 hours
Silver Hill Retaining Wall Subgrade	20 hrs/week x 2 weeks = 40 hours
Total Estimated Hours	300 Hours

We are happy to provide a revised estimate once a construction schedule is available. Construction monitoring services will be billed a Technician hourly rate of \$121/hour. We have included an allowance for direct reimbursable expenses for mileage to/from the Site for project travel.

Please note our scope of work excludes testing of fill placement. It is understood that an independent testing firm be retained to provide all other testing and inspection services.

Task 2 – Construction Administration/Consulting

Sanborn Head will provide support from the project manager, vice president, and principal level to review submittals and RFIs, review field reports, assist field personnel with construction issues as necessary, and otherwise manage the project. We have assumed that this will require approximately 4 hours per week or approximately 60 total hours.

Task 3 – SWM Exploration Planning, Layout and Utility Clearance

Sanborn Head will layout the proposed exploration locations in the field using tape measurements from existing site features. It is understood that others will provide the necessary excavation equipment and operator to perform the test pits in Task 4 below. We assume that the designated excavating firm will be responsible for notifying Dig Safe and locating all utilities.

Task 4 – SWM Subsurface Exploration

Sanborn Head will observe two (2) days of test pits to excavate up to eight (8) locations selected by the civil engineer to obtain soil data to aid in the stormwater design in up to four (4) areas within the footprint of the existing building and parking areas. It is assumed that these test pits will be performed under two (2) separate site visits. The test pits will be extended up to depths as designed by the civil engineer or until conditions preclude further excavation (i.e., boulders, groundwater, sidewall caving, etc.), whichever is shallower. A Sanborn Head engineer will observe the subsurface conditions in the test pits, measure water levels (if encountered), make observations of seasonal high groundwater, take photographic documentation of the excavations and prepare a USDA Soil Evaluator logs for each test pit performed for stormwater management design.

Task 5 – Stormwater Laboratory Analysis

We have provided budgetary provisions to perform soil laboratory analysis to classify the soil types encountered and to estimate their engineering characteristics for the stormwater systems. This analysis may include moisture content, sieve analysis, and USDA classification to assist in the classification of the soil types encountered for design of the stormwater systems by others.

Task 6 – Stormwater Design Memorandum

Sanborn Head will also convey the results of our hydrogeological findings to the project team via a summary memorandum which will include: recommended hydrogeologic soil group, depth to estimated seasonal high groundwater, recommended infiltration rates in accordance with

the Massachusetts Stormwater Handbook to support the stormwater design, explorations logs, and a location plan.

BUDGET ESTIMATE

Our services will be performed on a time-and-expense basis at the rates provided in the attached Schedule of Fees. Our proposed budget to complete the scope of work included herein is \$72,400. A breakdown of our estimated costs is presented below.

Scope of Services		Sanborn Head Labor	Sanborn Head Expenses	Estimated Total
Task 1	Construction Monitoring	\$36,300	\$3,150	\$39,450
Task 2	Construction Administration/Consulting	\$20,000	--	\$20,000
Task 3	SWM Exploration Planning and Layout	\$1,300	\$200	\$1,500
Task 4	SWM Subsurface Exploration	\$4,250	\$200	\$4,450
Task 5	SWM Laboratory Analysis	--	\$2,000	\$2,000
Task 6	Stormwater Design Memorandum	\$5,000	--	\$5,000
TOTAL BUDGET ESTIMATE		\$66,850	\$5,550	\$72,400

Our budget estimate is based on our current understanding of the project needs. Successful completion of the project can be influenced by changes in the scope of services as dictated by your needs, as well as unforeseen conditions. Changes that may require adjusting the scope of services and budget will be reviewed with you and an addendum to this agreement, if appropriate, will be provided at a later time based on the enclosed Schedule of Fees. We will not exceed the budget estimate without your understanding and authorization.

TERMS OF ENGAGEMENT


This proposal is subject to the attached Terms and Conditions which are an integral part of this agreement.

ACCEPTANCE

Please signify your acceptance of this proposal by signing in the appropriate spaces below and returning a copy to Sanborn Head. This Contract for Services and the above-referenced Terms and Conditions shall constitute the entire agreement between Dore + Whittier and Sanborn Head. This executed Contract for Services must be received by Sanborn Head prior to our initiation of the work described above.

Thank you for the opportunity to submit this proposal. We look forward to working with you on this project. Please call us at 610-420-0812 if you have any questions.

Very truly yours,
SANBORN, HEAD & ASSOCIATES, INC.



Matthew B. Van Rensler, P.E.
Senior Vice President

MBV: jrs

Attachments Schedule of Fees
Terms and Conditions

This proposal for services and the attached Terms and Conditions are hereby accepted and executed by a duly authorized signatory who, by execution hereof, warrants that he or she has full authority to act for, in the name, and on behalf of Dore + Whittier.

By: _____ Title: _____
for Dore + Whittier

Typed/Printed Name

Date: _____

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SANBORN, HEAD & ASSOCIATES, INC.

Schedule of Fees

Executive	\$363
Principal	\$341
Senior Associate	\$314
Associate	\$292
Senior Project Manager	\$253
Project Manager	\$226
Senior Project Coordinator	\$209
Senior Project Engineer/Geologist	\$193
Project Engineer/Geologist	\$182
Project Coordinator	\$176
Engineer/Geologist	\$171
Supervising Technician	\$154
Senior Engineer Technician	\$138
Engineer Technician	\$121
Support Staff	\$99
Subcontractors and Outside Services	List Price Plus 10%
Other Direct Expenses	Cost Plus 10%

Hourly rates will be charged for time worked on the project and for the time required for travel between the office and the meeting or project site. Local travel will be at IRS allowed rates.

Overtime hours will be charged using the hourly rates listed above.

Expert witness testimony, including preparation time, and other special services such as corporate acquisition due diligence studies generally require a dedicated commitment of senior staff. Therefore, hourly billing rates for Principals and Associates providing these dedicated services will be charged at a rate of 150% of the above schedule.

Sanborn, Head & Associates, Inc. reserves the right to revise this Schedule of Fees every 12 months from the date of this Agreement.

SANBORN, HEAD & ASSOCIATES, INC.

TERMS AND CONDITIONS

1.0 AGREEMENT

The Agreement consists of the Proposal that is signed and dated by **Sanborn, Head & Associates, Inc.** acting through its officers and employees (Consultant) and **Dore + Whittier (260 Merrimac Street, Building 7, Newburyport, MA 01950)** (Client) and these Terms and Conditions which are appended and incorporated by reference (Agreement). It is the mutual intention of the parties that, to the maximum extent permitted by applicable law, Consultant's services under this Agreement shall not subject any individual employee, officer, director or shareholder of the Consultant to any personal liability or exposure for matters arising under, or with respect to, this Agreement or the underlying project. Accordingly, notwithstanding anything to the contrary contained herein, Client agrees that Client's sole and exclusive recourse for all purposes of this Agreement shall be against the corporate entity, Sanborn, Head & Associates, Inc., and no claims, demands, suits or other actions of any kind or nature shall be asserted against any of Consultant's employees, officers, directors or shareholders individually. Services performed under this Agreement will be for Client's exclusive use. Consultant's services address current conditions; any delayed use of the results of the services will require updating the services to reflect current conditions. Neither party may assign this Agreement or any rights, claims, or liabilities arising out of this Agreement to any other person or entity without the express written consent of the other party. Any such impermissible assignment shall be void and of no effect.

2.0 PAYMENT

Client agrees to pay Consultant for services rendered in accordance with the payment terms provided in the Agreement. Invoices will be submitted at the completion of services or on a two-week or four-week basis, at the discretion of Consultant. Payment is due upon receipt of invoice. Amounts unpaid thirty (30) days after the due date shall bear interest at the lesser rate of eighteen percent (18%) per annum from the date of invoice or the maximum interest rate allowed by law. Client shall pay all expenses incurred by Consultant associated with placing a lien or otherwise incurred in collecting any delinquent amount, including, without limitation, attorney and filing fees. Client shall pay all costs of Consultant in enforcing its rights hereunder, including, without limitation, attorneys' and filing fees and expenses.

3.0 INSURANCE

Consultant maintains Worker's Compensation Insurance, Comprehensive General Liability Insurance, Automobile Liability Insurance, and Professional Liability Insurance. Consultant will furnish certificates of insurance upon request subsequent to execution of this Agreement.

4.0 LIMITATION OF LIABILITY

Client and Consultant agree to allocate certain risks so that, to the fullest extent permitted by law, Consultant's total aggregate liability to Client and anyone claiming by, through, or under the Client, is limited to the greater of \$50,000 or Consultant's fees actually paid with respect to this Agreement, for any and all of Client's injuries, damages, claims, losses, expenses, costs, or claim expenses (including reasonable attorney's and expert witness' fees) arising out of this Agreement from any cause or causes. Such causes include, but are not limited to, Consultant's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of express or implied warranty, contractual or common law indemnification, negligent misrepresentation, or other acts giving rise to liability based upon contract, tort, or statute. This provision takes precedence over any conflicting provisions of this Agreement.

5.0 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES AND SUBROGATION

Neither party shall be liable to the other for any consequential damages arising out of or related to the services or this Agreement incurred by either due to the fault of the other, regardless of: the nature of this fault; or whether it was committed by Client or Consultant, their employees, agents, or subcontractors; or whether such liability arises in breach of contract or warranty, tort (including negligence), statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use, loss of profit, and loss of anticipated revenue and income.

The Client and Consultant, further and separately, waive all claims and rights against each other arising out of damages, costs, losses, or expenses of any kind to the extent that such damages, costs, losses, or expenses are compensated by the proceeds of any insurance policy.

6.0 RIGHT OF ENTRY AND NORMAL DISTURBANCE

Client agrees to furnish Consultant with right of entry upon the site so that Consultant and Consultant's subcontractors can perform the services identified in the Agreement. If the site is not owned by Client, Client warrants that permission has been granted to make site reconnaissance, surveys, borings and other explorations pursuant to the scope of services in the Agreement.

Client acknowledges that equipment used in performing the services will, to some degree, affect, alter or damage the site surfaces, buildings, structures, vegetation, facilities and subsurface installations and accepts such risks. Consultant will take reasonable precautions to limit such damage, but has not included in the fee the cost for restoration of damage that may result from Consultant's operations, unless specifically stated in the Agreement.

7.0 UNDERGROUND STRUCTURES

Client shall identify for Consultant locations of buried utilities and other underground structures in the area of subsurface exploration. Consultant will take reasonable precautions to avoid damage to the buried utilities or other underground structures noted. If locations are not known or cannot be confirmed by Client, there will be some degree of risk to Client associated with conducting the exploration. Client agrees to accept the risks of damage and expense associated with repair or restoration of any buried utilities or underground structures resulting from the exploration work. Client also agrees to waive all claims against and defend, hold harmless and indemnify Consultant for any damages to buried utilities and underground structures, notwithstanding Section 5.0 above, this includes all consequential damages, arising from inaccurate or insufficient information provided by Client to Consultant regarding locations of buried utilities or other underground structures.

8.0 OWNERSHIP OF DOCUMENTS

All reports, design drawings, field data and notes, calculations, estimates and other documents prepared by Consultant are instruments of professional service and shall be and remain Consultant's property. Client agrees that Consultant's services are on behalf of and for the exclusive use of Client and that all reports or other documents furnished to Client or its agents shall be utilized solely for this Agreement. If Client seeks to reuse anything prepared by Consultant, or if others seek to use such documents, it will be at Client's, and such other user's, sole risk without liability to Consultant. In case of such unauthorized re-use, Client will waive all claims against and defend, indemnify and hold Consultant harmless from all claims, losses, liabilities and damages arising therefrom. Consultant will retain pertinent records relating to the services performed for a period of five (5) years following submission of our report or other documents.

9.0 CONSTRUCTION-OBSERVATION SERVICES

If construction-observation services are included as part of Consultant's scope of services in the Agreement, Consultant will provide personnel to observe the portions of the construction specified in the Agreement to ascertain that the work is being performed, in general, in accordance with the plans and specifications. Client is responsible for requesting services, and notifying Consultant so Consultant can perform these services.

Consultant cannot provide its opinion about the suitability of any work performed unless measurements and observations of that part of the construction are made by Consultant's personnel. Consultant's services do not make Consultant a guarantor of the contractor's work, and the contractor will continue to be responsible for the accuracy and adequacy of all construction activities performed by the contractor. The contractor will remain solely and completely responsible for enforcement by it and its subcontractors for safety requirements for all site working conditions, and safety requirements, day and night, for both persons and property. These include all OSHA, NIOSH, USEPA and any other applicable regulations imposed by the government or by contract. Consultant's observation and monitoring services do not include review of the sufficiency of the contractor's health and safety measures at or near the site.

Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions or programs, in connection with the project, nor for any contractor's failure to construct the work in accordance with the applicable plans and specifications.

Should Consultant not be retained to provide construction-observation during the implementation of Consultant's plans, specifications, and confirmation-dependent recommendations, or should Client unduly restrict Consultant's assignment of

observation personnel, Client shall, to the extent permitted by law, waive any claim against Consultant, and indemnify, defend, and hold Consultant harmless from any claim or liability for injury or loss arising from field problems allegedly caused or aggravated by findings, conclusions, recommendations, plans, or specifications developed by Consultant.

10.0 UNANTICIPATED HAZARDOUS MATERIALS

- A. Hazardous Materials are contaminants regulated by a public authority, typically because they are known or suspected to jeopardize human health and safety, through exposure of some kind, e.g., contact, inhalation, ingestion, absorption, or radiation. Such materials are listed in various federal, state, and local statutes and regulations.
- B. If a Hazardous Material or condition is discovered by Consultant that had not been disclosed to Consultant prior to preparation of the Proposal, then, upon notification, Client and Consultant shall seek to determine an equitable adjustment (if any is possible) to be made to this Agreement. If the parties are unable to agree, this Agreement may be terminated with respect to the project in accordance with the termination provisions set forth herein.
- C. In the event that Hazardous Materials at the project site are discovered to be nonconforming to conditions expressly contemplated in writing for the scope of the Consultant's services, the Proposal will be modified in a manner to be agreed upon by Consultant and the Client, or, if modification acceptable to Consultant is not executed by Client, Consultant shall not be obligated to perform the services set forth in the Proposal with respect to such nonconforming materials. Hazardous Materials shall be considered nonconforming for the purposes of this Agreement if one or combinations of the following situations occur:
 - i. if the Hazardous Materials are not anticipated to exist at the site;
 - ii. if the Hazardous Materials are present in quantities not disclosed in, or anticipated by Consultant from, available information;
 - iii. if the Hazardous Materials have characteristics or properties not disclosed in, or anticipated by Consultant from, such information;
 - iv. if such undisclosed or unanticipated constituents, characteristics, properties, or quantities increase the risk of hazard to human health or the environment involved in the performance of the services under this Agreement.

The Client agrees to notify Consultant immediately if it becomes aware of any Hazardous Materials at the project site which are nonconforming.

- D. The Client shall pay Consultant on a time and materials basis for its efforts to aid the Client dealing with nonconforming materials which are outside the scope of services set forth in the Proposal.

11.0 INDEMNIFICATION FOR HAZARDOUS MATERIALS

Client agrees that Consultant has not contributed to the presence of hazardous wastes, oils, asbestos or other Hazardous Materials that may exist or be discovered in the future at the site and that Consultant does not assume any liability for the known or unknown presence of such materials.

In acknowledgment of the imbalance between Consultant's and Client's relative benefits and risks in connection with the project and the services, Client shall to the fullest extent permitted by law defend, indemnify, and hold harmless Consultant, its subconsultants, subcontractors, agents, and employees from and against any and all claims, damages, losses and expenses, including court costs and attorney's fees that result from the presence, failure to detect or from the actual, alleged, or threatened release, discharge, dispersal or escape of any solid, liquid, gaseous or thermal irritant, asbestos in any form, or contaminants including smoke, vapor, soot, fumes, acids, alkalies, chemicals, waste oils or other Hazardous Materials, including nonconforming Hazardous Materials. Client shall be liable for claims, damages, losses, and expenses including defense costs and attorney's fees, unless such claims, damages, losses and expenses are caused by Consultant's sole negligence.

12.0 DISPOSAL OF SAMPLES AND HAZARDOUS MATERIALS

Soil, water, rock and/or other samples obtained from the project site are the property of Client. Consultant may, at its own discretion, discard the samples thirty (30) days after completion of its initial report. Should any samples be found to be contaminated by Hazardous Materials, it is Client's responsibility to arrange and pay for lawful disposal. If Client provides written instructions to retain such samples beyond the thirty (30) days, Consultant will arrange to store them. Client agrees to pay for storage and transport at Consultant's standard rate.

Consultant will not undertake any responsibility or liability for transport or disposal of hazardous or toxic substances either in samples obtained from the site, or in material generated during other site activities such as testing or remediation. Consultant will not, under any circumstances, sign manifests for such substances. Client agrees that Consultant is not a handler, generator, operator, treater, storer, transporter or disposer of toxic or hazardous substances found or identified at the site. Any manifests required for transport, treatment, storage and disposal of such substances will be signed by others in their own name.

13.0 STANDARD OF CARE

Consultant shall, in performing its services, exercise the same degree of skill and care ordinarily exercised under similar circumstances and conditions by practicing professionals undertaking similar services in the same locality at the same time. Subsequent standards will not be applied in judging Consultant's services. Client agrees that the services provided will be rendered without any warranty or guarantee, whether expressed or implied. Consultant will not be liable for the interpretation by others of data or information Consultant develops.

14.0 SUSPENSION OF WORK

Client may, at any time, by ten (10) days written notice, suspend further work by Consultant. Client shall remain fully liable for and shall promptly pay Consultant the full amount for services rendered to the effective date of suspension of services plus suspension charges. Suspension charges include the cost of putting documents and analyses in order, personnel and equipment rescheduling and assignment adjustments, and all other costs and charges directly attributable to suspension.

If payment of invoices by Client is not maintained on a thirty (30) day current basis, Consultant may, by providing a ten (10) day written notice to Client, suspend further work until payments are restored to a current basis. In the event that Consultant retains counsel to enforce overdue payments, the Client shall reimburse Consultant for all reasonable attorney's fees and court costs related to the enforcement of overdue payments. Client waives all claims against and shall indemnify and save Consultant harmless from any claim or liability resulting from suspension of the work due to non current payments.

15.0 DISPUTE RESOLUTION AND STATUTE OF LIMITATIONS

Client and Consultant shall endeavor to negotiate all claims, disputes, and other matters in controversy between Consultant and Client arising out of or in any way related to this Agreement in good faith for a period of 30 days from the date of notice, prior to exercising their rights at law. If the parties fail to resolve the dispute within 30 days, all claims, disputes, and other matters will be submitted to non-binding mediation before and as a condition precedent to other remedies provided by law. If a dispute at law arises related to the services provided under this Agreement and that dispute requires litigation, then: **(a)** Client assents to personal jurisdiction in the Commonwealth of Massachusetts; and **(b)** The claim will be brought and tried in judicial jurisdiction of the Commonwealth of Massachusetts and Client waives the right to remove the action to any other county or judicial jurisdiction.

Causes of action arising out of Consultant's services or this Agreement regardless of cause(s) or the theory of liability, including negligence, indemnity or other recovery shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of Consultant's substantial completion of services on the project.

16.0 PUBLIC RESPONSIBILITY

Client acknowledges that Client or the site owner, as the case may be, is now and shall remain in control of the site for all purposes at all times. Except as required by law, Consultant does not undertake to report to any federal, state, county, or local public agencies having jurisdiction over the subject matter any conditions existing at the site from time to time that may present a potential danger to public health, safety, and the environment. Client agrees to notify each appropriate

federal, state, county, and local public agency, as they may require, of the existence of any condition at the site that may present a potential danger to public health, safety, or the environment.

Notwithstanding the provisions of the foregoing, Consultant will, to the best of its knowledge, information, and belief, comply with subpoenas, judicial orders or government directives, and federal, state, county, and local laws, regulations and ordinances, and applicable codes regarding the reporting to the appropriate agencies of the findings with respect to potential dangers to public health, safety and the environment. Consultant shall have no liability or responsibility to Client or to any other person or entity for reports or disclosures made in accordance with such statutory or other lawful requirements. Client shall defend, indemnify, and hold Consultant harmless from and against any and all claims, demands, liabilities, and expense, including reasonable attorney's fees incurred by Consultant and arising directly or indirectly out of Consultant's reporting of such information under a bona fide belief or upon advice of counsel that such reporting or disclosure is required by law, except to the extent of Consultant's sole negligence.

17.0 FORCE MAJEURE

Neither party to this Agreement will be liable to the other party for delays in performing the services, nor for the direct or indirect cost resulting from such delays, that may result from labor strikes, riots, war, acts of government authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

18.0 SEVERABILITY AND SURVIVAL

Any element of this Agreement later held to violate a law shall be deemed void, and all remaining provisions shall continue in force. However, Client and Consultant will in good faith attempt to replace any invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing the intent of the original provision. All terms and conditions of this Agreement allocating liability between Client and Consultant shall survive the completion of the services hereunder and the termination of this Agreement.

19.0 ASSIGNMENT

This Agreement, made up of Consultant's Proposal and these Terms and Conditions, cannot be modified orally, or by any course of conduct, and shall control over any inconsistent or contrary provisions in any proposal, contract form, purchase order or other document issued by Client. These Terms and Conditions shall survive the completion, or termination, of our services for this project. Consultant shall not delegate any duties, nor assign any rights or claims under this Agreement nor subcontract any part of the services authorized, without prior written consent of Client. Likewise, any assignment of Client's rights or claims under this Agreement requires Consultant's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

20.0 GOVERNING LAW

This Agreement is to be governed and enforced in accordance with the laws of the Commonwealth of Massachusetts.