

TOWN OF CASTINE
SELECTMEN, ASSESSORS & OVERSEERS OF THE POOR
MEETING MINUTES

CP
GM

DATE: Thursday, June 22, 2023

TIME: 11:30 AM

PLACE: Emerson Hall

PRESENT: Colin Powell, Chair; Gordon MacArthur, Selectboard member; and Susan Macomber, Town Clerk.

PUBLIC: Zander Parker, Harbor Committee Chair and Scott Vogell, Harbor Master.

Colin Powell opened the meeting at 11:33 AM.

Business:

Item #1. Gordon MacArthur made motion to approve up to \$20,500 for test bore at the Castine Town Dock Waterfront. Second by Colin Powell.

Discussion. Scott Vogell, Harbor Master, said that he reached Roberta Boczkiewicz (Selectboard member absent) who was unable to be in attendance but said she is in support of approving.

Zander, Harbor Committee Chair, said that approving this expense for the test bore would be a considerable savings, considering GZA's first cost proposal was \$50,000. Zander also said he believed the information from the test boring would be valuable for the decision process and we have an opportunity to complete due diligence in the design process at a revised cost. This will likely be a savings for any future engineering needed for the Town project.

The specific test bore site is still under discussion but will be ironed out by Monday when they will conduct the test bore. There will be a significantly large barge in front of the Town's waterfront for a day or less.

It was also mentioned that other Harbor Committee members who could not be present were informed of the revised cost, and all were in support of approval.

Gordon MacArthur thanked Zander and Scott for being at the meeting to review details. He said he felt it was better to disrupt the waterfront for a day sooner rather than later. Better now than in August.

Zander also mentioned that MMA now had a portal up and running which gives helpful information. Susan Macomber, Town Clerk, said she would look into the possibility of sharing the portal link on the Town's website (contact Kate Noel).

With no other discussion, Colin Powell called for votes.

Approved 2-0 (Roberta Boczkiewicz absent – she gave verbal support).

Gordon MacArthur made motion to adjourn. Second by Colin Powell.

Approved 2-0. Meeting adjourned at 11:37 AM.

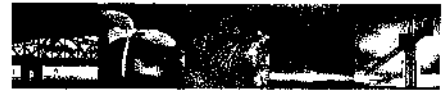
Minutes by Susan Macomber, Town Clerk.



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www.gza.com



Via Email
Zander.Parker@mma.edu

21 June 2023
File No. 03.P000025.24

Zander Parker, Harbor Committee Chair
Town of Castine, Maine
P.O. Box 204
67 Court Street
Castine, ME 04421

Re: Professional Engineering Services – Water Soil Boring and Rock Core
Town Dock
Main Street
Castine, ME 04421

Dear Zander Parker,

GZA GeoEnvironmental, Inc. (GZA) provided you with a proposal on 8 June 2023 for Professional Engineering Services associated with the maintenance and improvements at the Town Dock's waterfront facility. Within that proposal, we included a potential additional service for a water boring to take advantage of the contractor who is currently in Castine for the water borings at Maine Maritime Academy (MMA). This proposal presents the scope and fee for the water boring and material laboratory testing.

SCOPE OF SERVICES

GZA is currently progressing a subsurface investigation program at MMA. The program includes water borings offshore of the existing MMA pier. Based on historic boring records and the preliminary field data for the current water borings, the depth of the soil between mudline and top of bedrock (overburden) is variable, the type of soils and the soil thickness layers vary, the apparent bedrock surface is variable and suggests it may be sloping, and the type of bedrock varies. With these variabilities existing across MMA's limited waterfront, we recommend that a water boring and a 10-foot bedrock core be completed within the area identified by the Harbor Committee for the extended dinghy basin. See **Figure 1**.

The water boring and bedrock core would provide subsurface information to characterize the type of soils encountered, the soil layer thicknesses, the top of bedrock elevation and characterization of the type of bedrock. All of this data allows us to assign design values to the soils and bedrock that are used in the design of the guide piles for the proposed floating dock. Guide piles require that the pile is sized and embedded or anchored such that the structural and geotechnical capacities of the pile are greater than effects from the anticipated loads from environmental factors (wind and current) acting on moored vessels and from berthing of vessels. If the overburden depth is not deep enough and/or is comprised of "weak" soils, a rock socket into bedrock would be required. The length of the rock socket is dependent on the



type, quality and strength of the bedrock. The cost of rock sockets is substantial. Therefore, defining and characterizing the overburden and bedrock within the area of the project provides information for the engineer to design the piles and for the marine contractor to determine, and price, the type of pile driving equipment and drill rig for the likely conditions to be encountered.

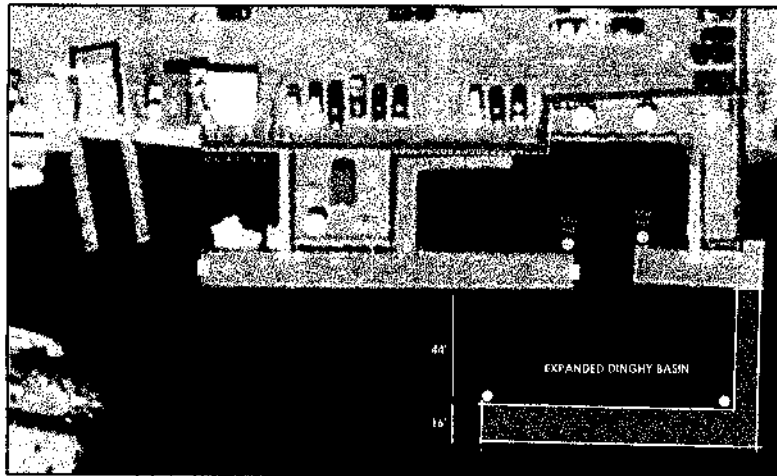


Figure 1: Potential Floating Dock for Expanded Dinghy Basin, Castine Harbor Committee Figure, March 2023

During the soil boring and bedrock coring operations, GZA field personnel document the progress of the boring/coring, takes soil samples, complete field classification of the soil based on visual observation, and complete field tests/measurements on the soil and bedrock retrieved. The GZA field personnel also prepares samples for laboratory materials testing and coordinates directly with the materials laboratory. For this project, we would engage our standard geotechnical testing laboratory to conduct laboratory tests. Anticipated laboratory tests are summarized in the table that follows. The results of the laboratory tests supplement the visual soil classifications made in the field and provide material properties for use in design.

LABORATORY TESTING	ASTM TEST STANDARD	QUANTITY (UP TO)	NOTES
Gradation	ASTM D6913	2	Soil classification
Moisture Content	ASTM D2216	2	Silt and clay only, as needed
Atterberg Limits	ASTM D4318	1	Silt and clay only, as needed
Unconfined Compression on Rock	ASTM D7012C	1	

Upon receipt of laboratory results, we will provide a copy of the boring log and laboratory test results for your records. We have assumed that establishing the soil and bedrock design values is not included in this scope of work. It will be completed under the design scope of work under a separate agreement.

If the proposed soil boring and rock core are not completed, conservative assumptions would be used for the guide pile design which may result in larger diameter piles and longer rock sockets. The bid documents would include generalized description of potential subsurface conditions with a disclaimer which will result in higher pricing by the contractor. If encountered conditions during construction differ from those assumed for design, or differ from those assumed by the contractor for their bid, the Town may incur added costs during construction for the reevaluation of the pile and/or rock



socket for the conditions encountered and/or for changed conditions and different construction equipment needed by the contractor.

SCHEDULE

To complete the described scope of work, we must receive notice to proceed (NTP) on 22 June 2023. Upon receipt of NTP, we will immediately begin the coordination with the driller and plan for the field site work. We will coordinate with you on logistics given that recreational boats are using the Town Dock for the season.

Please note that if, after advancing the boring and sampling for an initial period, it appears that the production rate is such that bedrock will not be reached or the bedrock core will not be completed within the one-day allotted time, the drill casing will be advanced without further soil sampling to attempt to reach bedrock.

FEE AND BASIS OF BILLING

The estimated budget to complete the Scope of Work described in this *Proposal for Services* is **\$20,478**. Our billings will be based on actual time and expenses in accordance with the table below and the attached GZA Schedule of Fees.

When we developed the fee for the water boring in our 8 June 2023 proposal, we assumed that three days would be required to reach bedrock and complete the 10-foot rock core. Based on the production rate of the driller completing the MMA water borings, the driller has indicated that they think they can do the one boring and rock core in one day. The following is a breakdown of the estimated fee with the assumption that the work will be completed immediately after the water borings at MMA and completed by the same driller and barge such that no costs are incurred for mobilization or demobilization. (An estimated savings of \$50,000.) The fee breakdown assumes that the area will be cleared by DigSafe for the drilling to commence the day after the MMA water borings are completed without any downtime. If the site is not cleared, there is a barge and crew fee of \$4,500/day.

ITEM	ESTIMATED FEE
Driller Subcontractor*	
DigSafe	\$ 150
Water Drill and Crew (1 day)	\$ 3,250
Barge and Crew (1 day)	\$ 7,500
Support Boat (1 day)	\$ 850
Fuel Surcharge (1 day)	\$ 100
Rock Coring (10 feet)	\$ 325
Rock Box (1)	\$ 37
Lodging/Meals -Barge and Drill Crews (1 night)	\$ 450
Subcontractor Subtotal	\$ 12,662
GZA Fees	
GZA subcontractor mark-up	\$ 1,266
GZA field personnel and office support (labor)	\$ 4,750
GZA Expenses (travel, lodging/meals, communication fee)	\$ 800
Materials Laboratory Testing Allowance	\$ 1,000
Total Estimated Fee	\$ 20,478
Potential Downtime (1 day)	\$ 4,500



The scope and fee in this proposal represent our current judgment as to the effort required to achieve the stated objectives. Unforeseen conditions that become evident during the course of the work and that may alter or increase the effort required, will be brought to the attention of the Harbor Committee/Town. Additional services will be provided upon mutual agreement between GZA and the Harbor Committee/Town and upon written acceptance by both parties of a scope modification and fee adjustment.

Invoices for our services will be emailed to the email address presented above for the Harbor Committee. Should your billing address be different, please provide that information on the last page of this agreement.

ACCEPTANCE

Terms and Conditions of Engagement are outlined in the attached Statement of Terms and Conditions, which are an integral part of this agreement. This proposal may be accepted by signing in the appropriate spaces below and returning one copy to us. This Proposal for Services and Terms and Conditions shall constitute the entire agreement between the parties. The fees in this proposal may be subject to increases if not accepted on 22 June 2023 due to the driller and barge availability.

Thank you for giving us the opportunity to submit this proposal. If you have any questions, please do not hesitate to call us.
Very truly yours,

GZA GEOENVIRONMENTAL, INC.

Handwritten signature of Rebecca Cherry in cursive.

Rebecca Cherry, P.E. MA, ME, NH
Project Manager
rebecca.cherry@gza.com
603-762-7352

Handwritten signature of Dino Fiscoletti in cursive.

Dino Fiscoletti, P.E., MA, RI, D.PE
Senior Consultant
dino.fiscoletti@gza.com
401-474-6779

Handwritten signature of Cheryl W. Coviello in cursive.

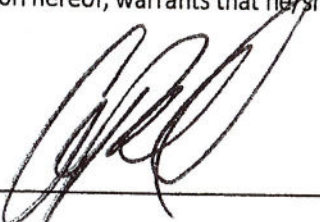
Cheryl W. Coviello, P.E. NH, D.PE
Associate Principal
cheryl.coviello@gza.com
603-828-3233

Enclosures: Schedule of Fees
Terms and Conditions of Engagement (08/08-Edition/05-9011)



This Proposal for Services and Terms and Conditions of Engagement 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 Town of Castine, Maine:

Town of Castine, Maine

By  Title Castine Selectboard Chair

Typed Name Colin P. Powell Date 6/22/2023

Billing address (if different from above): Town of Castine, P.O. Box 204 Castine ME 04421



Schedule of Fees – Calendar Year 2023

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Client ("You"): Town of Castine, Maine

Proposal No: 03.P000025.24

Date: June 8, 2023

Senior Principals	\$ 270 per hour
Principals	\$ 260 per hour
Associate Principals	\$ 250 per hour
Senior Technical Consultant	\$ 240 per hour
Senior Project Manager	\$ 220 per hour
Project Manager	\$ 190 per hour
Assistant Project Manager	\$ 170 per hour
Engineer/Geologist I	\$ 135 per hour
Engineer/Geologist II	\$ 130 per hour
Engineering Technician	\$ 95 per hour
CAD Designer Grade I	\$ 150 per hour
CAD Designer Grade II	\$ 130 per hour
CAD Designer Grade III	\$ 125 per hour
Senior Administrative Assistant	\$ 115 per hour
Administrative Assistant	\$ 95 per hour
Project Support	\$ 95 per hour
Outside Services and Out-of-Pocket Expenses	Cost Plus 15%

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 meeting site and return, or from/to home if mileage is less.
- ... For work requiring out-of-town overnight stay, the minimum charge for work on the project will be eight (8) hours per day.
- ... Laboratory service charges based on standard unit prices.
- ... Communication fee charged at 3.0% of labor invoiced for total cost of local, long distance, and cellular phone equipment and connectivity; electronic data communication and transmission; facsimile and document scanning; and USPS postage.
- * *A fifty percent (50%) premium will be added to the above rates for expert witness and other special services of Senior Principals, Principals, and Associate Principals.*
- * *Labor rates may be adjusted on an annual basis commensurate to salary increases.*



TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

© 2023 by GZA GeoEnvironmental, Inc.

Client ("You"): Town of Castine, Maine
Proposal No: 03.P000025.24
Site: Town Dock

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 (the "Services"). 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 professional 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. EXCEPT AS SET FORTH IN SUBSECTIONS 2a 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.
 - c. 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 the 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 (including costs for time expended by in-house counsel, which will be charged to you at the prevailing market rate for attorneys of similar experience practicing in the jurisdiction).
- 4. Your Responsibilities.**
 - a. Except as otherwise agreed in writing, you will secure the access agreements, 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 (including, if applicable, asbestos containing materials ["ACM"]) 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 contractor or 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 defend, indemnify and hold harmless, to the fullest extent permitted by law, you and GZA and its officers, directors, members, partners, agents, employees, and subconsultants (the "GZA Indemnitees"), 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 to ensure that such policies are primary and noncontributory with regard to the above indemnity obligations; 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 (but in any event prior to the commencement of the Services) 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 the GZA Indemnitees for any claims by the Site owner related to alleged trespass by GZA or its subcontractors. Although GZA will exercise reasonable care to limit damage to landscaping, paving, systems and structures at the Site, you acknowledge that some damage may occur even with the exercise of due care 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 Agreement 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. YOU SHALL INDEMNIFY AND HOLD HARMLESS THE GZA INDEMNITEES FROM ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM ANY USE, REUSE, OR MODIFICATION OF THE DOCUMENTS WITHOUT WRITTEN VERIFICATION, COMPLETION, OR ADAPTATION BY GZA AND SUCH LIMITED LICENSE TO YOU SHALL NOT CREATE ANY RIGHTS IN THIRD PARTIES.**
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, Certified Hazardous Materials Managers,, 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, including, if applicable, ACMs (the "Wastes") are removed from the Site, you will sign manifests naming you as the generator of the Wastes (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 Wastes are taken. GZA will not be the generator or owner of, nor will it possess, take title to, or assume legal liability for any Wastes 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 Wastes at or removed from the Site, other than any laboratory samples it collects or tests. You agree to defend, indemnify and hold the GZA Indemnitees 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 any Wastes.
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.**
- You recognize the uncertainties related to the Services (including, without limitation, 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.
 - 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.
 - If no agreement can be reached, GZA will be entitled to terminate the 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 the Services; (b) to comply with professional standards to protect public health, safety and the environment; and (c) to comply with laws, regulations, court orders and professional obligations. 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 the GZA Indemnitees 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 written notice of such claim is 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. To the extent damages are covered by property insurance or any other insurance, both you and GZA waive all rights against each other and against the contractors, consultants, agents, and employees of the other, for damages, except such rights as they may have to the proceeds of such insurance as set forth in this Agreement. The you or GZA, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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. However, where non-payment of an invoice has occurred and GZA sends you a final demand letter for payment, your failure to respond within ten (10) days of receipt (or, for certified mail, the date of the first attempt to deliver the letter to your address of record if you ultimately do not accept receipt of the letter) of such letter will be deemed to be a waiver of your right to enforce this mediation clause and GZA may immediately file suit to enforce the terms of this Agreement.

20. Miscellaneous.

- a. This Agreement and all claims relating thereto shall be governed by the substantive and procedural laws of the Commonwealth of Massachusetts, as they presently exist or may hereafter be amended, without regard to principles of conflict of laws.
- 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. No modification of these Terms and Conditions will be binding against GZA unless specifically approved in writing by a Principal of GZA.
- d. Having received these Terms and Conditions, your oral authorization to commence Services, your acceptance of performance of the 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, even if signed by an authorized representative of GZA.
- 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, reimbursement, insurance proceeds or grant funds 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.
- k. Any reports generated by GZA will be subject to GZA's standard report limitations for that particular type of report.

21. Asbestos Abatement Services (If Applicable). If the Services include asbestos abatement services, then the following terms and conditions will apply and will supersede any conflicting terms contained elsewhere in this Agreement.

- a. You acknowledge that conditions can vary from those encountered at the times and locations of explorations and data collection, and that the limitation on available data may result in some level of uncertainty with respect to the interpretation of those conditions, despite due professional care. GZA therefore cannot guaranty specific results such as the identification or removal of all asbestos or other contamination.



22. **Microbial Services (If Applicable).** If the Services include microbial services, then the following terms and conditions will apply and will supersede any conflicting terms contained elsewhere in this Agreement.
- a. You recognize that meeting the standard of care does not establish an assurance that corrective procedures will be permanent. Because Microbial infestations are created by near-omnipresent living microscopic spores, grows very quickly and are influenced by nanoclimatological conditions that are very difficult to detect and sources of water intrusion, elevated moisture or relative humidity over which GZA has neither control or responsibility, GZA cannot and does not claim that its Services will eliminate the risk of a Microbial infestation recurring.
 - b. You acknowledge that the Services entail risk of personal injury and property damage (including cross-contamination) that cannot be avoided, even with the exercise of due care. You also acknowledge that environmental conditions can vary from those encountered at the times and locations of explorations and data collection, and that the limitation on available data may result in some level of uncertainty with respect to the interpretation of these conditions, despite due care. GZA therefore cannot guaranty specific results such as the identification of all contamination or other environmental conditions or problems nor their resolution.
 - c. You acknowledge that Microbial infestations may be hidden from view and concealed in locations that are difficult to discover. Accordingly, you agree that despite GZA's efforts, some Microbial locations may remain undetected. In such situations, you agree that you will have no claim against GZA provided GZA followed all applicable laws and regulations pertaining to the Work.
 - d. For purposes of this Agreement, Microbial is defined as any and all fungal and/or bacterial growth including but not limited to mold, mildew, yeast, fungus, fungi, bacteria, spores, odors, particulates, vapors, gas, or other emissions produced by or arising out of or toxins emanating therefrom.
 - e. You further agree that where GZA shall performs Services intended to minimize the risk of Microbial infestations, GZA shall not be liable for damages resulting from Microbial contamination including but not limited to fungal or bacterial infestations and water damage or dry or wet rot and you agree to waive any Microbial infestation claim(s) against GZA, and you agree to indemnify, defend and hold the GZA Indemnitees harmless from any claim alleging that GZA's Services caused or aggravated a Microbial infestation or did not prevent a Microbial infestation from re-occurring.