



23

COMMUNITY MITIGATION FUND

2023 Transportation Construction Grant Application

Bid No. Bid No. BD-23-1068-1068C-1068L-81256

All completed applications must be sent by January 31st to be considered for funding for the 2023 Grant Round. Please submit this completed form as well as any relevant attachments to MGCCMF@Massgaming.gov.

For more detailed instructions as well as the 2023 Application Guidelines please visit <https://massgaming.com/about/community-mitigation-fund/>

I. Project Summary
Legal Name of Applicant: Town of Hampden, MA
Project Name (Please limit to 5 words): Sidewalk design
Amount Requested: \$203,100
Brief Project Description (approx. 50 words): Design of a sidewalk. In part, the design would be for replacement of an old blacktop sidewalk and partly to extend the existing sidewalk along Main Street, a recognized impact street from the MGM Casino.

II. Applicant Contact Information
Please provide below the manager for this grant and any other individuals you would like to be copied on all correspondence.
Grant Manager: Robert T. Markel
Email Address: townadmin@hampdenma.gov
Telephone Number: 413-566-2151
Address: 610 Main Street, Hampden, MA 01036
Contact II: Mark Langone
Role: Highway Superintendent
Email Address: Highway@hampdenma.gov
Telephone Number: 413-566-8842
Address: 589 Main Street, Hampden, MA 01036
Contact III: John D. Flynn
Role: Chair, Board of Selectmen
Email Address: jdflynn@hampden.com
Telephone Number: 413-374-2028
Address: Selectmen Office, 625 Main Street, Hampden, MA 01036

2023 Transportation Construction Grant Application

Bid No. BD-23-1068-1068C-1068L-81256

Page 2

III. Detailed Project Description & Mitigation
<p>1) Please describe in detail the impact that is attributed to the operation of a gaming facility. Please provide documentation or evidence that gives support for the determination that the operation of the gaming facility caused or is causing the impact (i.e. surveys, data, reports)</p>
<p>More residents are walking for exercise and health. Along Main Street, there is a partial sidewalk, non-compliant with ADA standards. We would like to replace the existing blacktop sidewalk and add an extension to Somers Road.</p> <p>The Town has \$1.3 million for construction via the state’s Transportation Bond bill. We need funding for design on the south and north sides of Main Street.</p>
<p>2) <i>(If applicable)</i> Please explain how this impact was not anticipated in the Applicant’s Host or Surrounding Community Agreement.</p>
<p>Until recently, the Town’s leadership was not interested in more and better sidewalks. The demand has come from those who walk for exercise.</p>
<p>3) Please describe what the Applicant is proposing and how the mitigation request will address the impact indicated.</p>
<p>We are proposing to make Main Street safer for pedestrians by providing an ADA compliant sidewalk all along Main Street from North Road to Somers Road.</p>
<p>4) For all Transportation Construction Applications, the applicant should consult with MassDOT and the appropriate regional planning agency to obtain input on the project and identify opportunities for regional efforts. The results of this consultation should be included in this section of the application.</p>

We have not yet consulted with MassDot or the regional planning agency. Tighe and Bond, our design consultant, will do this.

IV. Scope, Budget, and Timeline

Applicant: Town of Hampden

Vendor Code: TIN 04-6001169

Total Grant Amount Requested: \$203,100

Estimated Total Project Cost: \$1,503,000

Scope of Work

Please include below a breakdown of the proposed work. The project scope should be sufficiently detailed to allow the review team to understand the steps required for project completion.

The proposal from Tighe and Bond for sidewalk design is attached.

Proposed MGC Grant Budget

Please use the following table to outline the budget of your project. Include any requests for proposals, quotes, or estimates that would quantify the costs associated with the mitigation as an attachment. In determining the funding request, please round up to the nearest hundred dollars.

Please provide the estimate and percentage of the costs projected to be funded from other federal, state, local or private contributions (Applicants may include contributions from gaming licensees).

Please indicate, through a commitment letter or otherwise, how such other funding will be available for the project. In the absence of a final commitment to such funding, please provide detail on any process needed to secure any non-CMF funding.

2023 Transportation Construction Grant Application

Bid No. BD-23-1068-1068C-1068L-81256

Page 5

Timeline	Description of Purchase/Work	QTY	Budget
Spring 2023	Sidewalk design	1	\$203,100
Fall 2023	Sidewalk construction	1	\$1,300,000
	TOTAL:		\$1,503,100

Funding Source	Description of Purchase/Work	QTY	
In Kind Services			
Federal	.		
State	Sidewalk construction	1	\$1,300,000
Local Match	Crosswalk to Memorial Park	1	\$23,000

V. Regional Incentive Award	
Are you applying for a Regional Incentive Award?	
___ Yes	_X_ No

Partner Community Contact-
Name:
Role:
Email Address:
Telephone Number:
Address:

VI. Waiver	
If you are applying for a waiver, please submit the Waiver Form with your application. The form can be found at www.massgaming.com/about/community-mitigation-fund/forms/	
Are you applying for a waiver?	
___ Yes	__X_ No

VII. _ Please provide a brief description of each attachment.
An attachment from Tighe and Bond for the design cost of the Main Street sidewalk.

VIII. Applicant Certificate

On behalf of the aforementioned applicant/municipality/governmental entity I hereby certify that the funds that are requested in this application will be used solely for the purposes articulated in this Application.

Signature of Responsible Municipal
Official/Governmental Entity

Date:



January 25, 2023

(print name)

Robert T. Markel

Title:

Town Administrator

H-143602-P029
December 1, 2022

Mr. Robert Markel, Town Manager
Town of Hampden
632 Main Street
Hampden, MA 01036

Re: **Main Street Sidewalk Design Services Proposal**

Dear Bob:

As we recently discussed, the Town of Hampden intends to provide new sidewalks on Main Street between Somers Road and North Road. The new sidewalk will be located on the south side of Main Street and will provide a constant ADA accessible path between Somers Road and North Road. It is our understanding that the Town is expecting funding from the American Rescue Plan Act (ARPA) and the Massachusetts Gaming Commission to assist in the development of the project.

Project Understanding

Based on our discussions, we understand the project work limits to be as follows:

- Approximately 8,000 feet of cement concrete sidewalks on Main Street from the intersection of Somers Road to the intersection of North Road
- Asphalt sidewalk replacement on the north side of Main Street from the Hampden Memorial Park driveway to North Road
- Crosswalks and connections to existing sidewalks at each intersection along the project corridor

Work within the project limits will include:

- Demolition of existing hot mix asphalt sidewalks
- Installing new cement concrete sidewalks
- ADA compliant ramps and surfaces
- Granite curb at ADA compliant ramps
- Pedestrian crosswalks
- Signage based on the Manual on Uniform Traffic Devices (MUTCD)

Scope of Services

Tighe & Bond's scope of services include the tasks necessary to develop a project manual, including technical specifications, and construction drawings. Our proposal is based on preparing the bid documents for new cement concrete sidewalks, accessible ramps, and signage within the existing right-of-way. The proposed work, quantity estimates, and project limits will be based on municipal parcel lines, field reconnaissance observations, and a topographic survey.



We have defined the anticipated scope of services into the following tasks as described below:

Task 1: Base Plan Development

Kick-Off Meeting: We will conduct a project kick-off meeting with the Town to review the scope of the project and coordination issues. We will discuss specific project aspects including sidewalk alignment, location, preservation of existing trees and landscaping, public/private access during construction, mailbox locations, and ADA/AAB accessibility.

Following the meeting, we will conduct a field visit to collect additional field details to assist in preparation of layouts and design drawings. We will record and distribute meeting minutes to document the discussions from the meeting and field visit.

Survey Coordination: Tighe & Bond will retain a land surveying subcontractor to collect existing condition information, visible surface and overhead utilities, and topographic information in conformance with MassDOT survey requirements. The survey will extend 100 feet up intersecting streets and include survey data from the northern curb line to approximately 25 feet south of the southern curb line. The survey will be performed on NAD 83 horizontal and NAVD 88 vertical datums with a one-foot contour interval. We have assumed that the Town will notify the adjacent property owners of survey activities, including the anticipated schedule of work.

Wetland Delineation: Tighe & Bond wetland scientists will delineate jurisdictional wetland resource areas within the public roadway right-of-way and/or Town-owned parcels within approximately 100 feet of the limits of work. Wetland boundaries will be marked with sequentially labeled flagging and located with a Global Positioning System (GPS) unit with sub-meter accuracy.

Subsurface Explorations: Tighe & Bond will coordinate a subsurface exploration program to evaluate the suitability of the site's subsurface conditions for the proposed sidewalks.

Exploration Layout and Coordination: Tighe & Bond will mark the proposed exploration locations prior to the driller performing the required utility clearance notifications. Locations will be established by measuring off existing site features. Tighe & Bond will coordinate the exploration efforts, including "Dig Safe" notification by the drilling subcontractor upon completion of the field marking.

Test Borings: Tighe & Bond will subcontract with a drilling contractor to complete two days of borings on the south side of Main Street. We have assumed that the boring locations will be truck rig accessible. We anticipate that up to twenty borings will be completed within the time budgeted. Borings will be advanced with continuous sampling from the ground surface down to four feet and should not require auguring.

Split-spoon samples using Standard Penetration Test (SPT) procedures will be obtained continuously through existing fill or organic soils to a maximum depth of four feet.

We anticipate that no investigation derived waste (IDW) requiring off-site disposal will be generated. However, if IDW is generated that should not be placed on the ground surface, the excess soils will then be drummed, and the cost of the drum and analytical testing and disposal of drummed soils will be mutually agreed upon under a contract amendment.

Boreholes will be backfilled with cuttings or sand if there are insufficient cuttings to fill the hole. Any cuttings unable to be returned to the hole will be spread near the boring location in a vegetated upland area.

A Tighe & Bond engineer or environmental scientist will be onsite to observe and document the test borings.

Permitting: A Request for Determination of Applicability (RDA) is required for the advancement of geotechnical borings per the Town's Wetlands Bylaw and for any borings within the limits of Bordering Land Subject to Flooding or within Riverfront Area (under both the Massachusetts Wetlands Protection Act and Bylaw). An administratively complete RDA will be prepared and filed with the Hampden Conservation Commission and MassDEP, as appropriate. Per the requirements of the Bylaw, applicants are required to notify abutters within 300 feet of the project area at the time an RDA is submitted to the Conservation Commission. The Conservation Commission is required to discuss the RDA during a public meeting and, at their discretion, may conduct a site visit.

Task 2: Engineering and Design

Design Plans: Based upon the results of the field data collection and site visit, we will develop project construction documents, including drawings and a project manual.

Tighe & Bond will develop drawings to detail the sidewalk improvements. Preliminary plans, approximately 60% complete, will be submitted to the Town for review and comment, and we will attend a meeting to discuss the design. After incorporating comments or making modifications to the preliminary plans, we will begin developing the Final Construction Documents including project specifications.

The bidding documents will include a bid alternative for the replacement sidewalk located on the north side of Main Street between Hampden Memorial Park driveway and North Road. Following opening of bids, if the project budget allows, this portion of the work will be included in the contract.

The following list of drawings are anticipated to be necessary to develop the construction documents:

- Cover Sheet
- General Notes, Legend, and Abbreviations
- Sidewalk Improvement Plans
- Sidewalk/Construction Details
- Temporary Traffic Control Plans

Specifications: Tighe & Bond will develop technical specifications for the proposed work items. We will provide the Town with a "Project Manual" which will include Divisions 0 and 1 specifications that define the administrative project requirements as determined by the Town. Division 2 technical specifications will reference MassDOT standard specifications and include special provisions as necessary.

The project manual will include the following:

- Division 0 – Bidding and Contract Requirements
 - Advertisement for Bids
 - Information for Bidders
 - Bid Form with Attachments
 - Agreement Between Owner and Contractor for Construction Contract
 - Performance Bond
 - Payment Bond
 - General Conditions
 - Supplementary Conditions
 - State Wages
- Division 1 – General Requirements (Measurement and Payment, Project Controls, etc.)
- Special Provisions – Technical Specifications (MassDOT Format)

Opinion of Probable Construction Costs: We will provide the Town with an opinion of probable construction costs (OPCC), which will identify the anticipated construction costs. The project OPCC will be prepared at the 60% design level and updated for the final 100% design documents and submitted to the Town.

Final Construction Documents: The construction documents will consist of the specifications and design plans. The construction documents will be sealed and signed by a Professional Engineer, registered in the Commonwealth of Massachusetts.

Task 3: Permitting

The proposed activities will occur near wetland resource areas requiring authorization under the Massachusetts Wetlands Protection Act (MAWPA; M.G.L. c. 131 § 40) and the Town of Hampden Wetlands Protection Bylaws (Bylaws). Given Tighe & Bond's experience permitting similar projects, we have identified the following tasks as being the necessary to obtain regulatory authorizations to construct the project.

Notice of Intent: The work requires authorization under the MAWPA and its implementing regulations (310 CMR 10.00) and Hampden Bylaws. Based on the nature and extent of work anticipated within protected wetland resource areas, we will prepare a Notice of Intent (NOI) for the project.

The following tasks/items will be included in the preparation of the NOI:

- Permit application forms
- Project narrative including construction sequence, and alternatives analysis
- Resource maps (e.g., USGS, floodplain, rare species)
- Site photographs
- Site plans and drawings depicting the proposed activities
- Submission of the NOI to the Conservation Commission, notification of abutters and submission of the required legal notice
- Recording the Order of Conditions with the County Registry of Deeds.
- Preparation of a Stormwater Report

Tighe & Bond will attend one (1) site visit and up to two (2) public hearings with the Conservation Commission. Upon issuance of an Order of Conditions, we will record the Order at the Hampden County Registry of Deeds and submit proof of recording to the Hampden Conservation Commission.

Task 4: Bid Administration Assistance

Tighe & Bond will prepare the bid package including advertisement (Central Register and local newspaper), instructions for bidders, state wage rates, affirmative action/equal opportunity employment language, general conditions, and other documents as required for public bidding. The Town of Hampden will be responsible for notifying Massachusetts. CommBuys (www.commbuys.com) and posting in the local newspaper.

Contract Drawings will also be prepared for inclusion with the bid documents. Tighe & Bond will provide the Town with one printed copy of the construction documents and electronic copies will be available for public viewing and interested bidders, electronically through our online "Information Center" (Found at: (www.tighebond.com/projects_out_to_bid.php)). The Town will pay for all advertising and public notice fees.

Tighe & Bond will also assist the Town with the following bidding phase services:

- Addenda – We will assist the Town with the responses to bidder questions/RFIs during bidding. We will prepare and issue addenda as necessary based on questions received from bidders.
- We will attend the bid opening with the Town's procurement officials
- Bid Award Recommendation – We will tabulate and review the bid proposals as obtained by the Town, contact the low bidder references, and provide the Town with a letter regarding recommendation for award of the project.
- Contract Document Preparation – Following the Notice of Award from the Town, we will coordinate the submission of the necessary bonds and insurance certificates by the successful low Bidder.

Task 5: Construction Administration Assistance

Tighe & Bond will assist the Town during construction by providing the following services:

- Attend the pre-construction conference
- Attend bi-weekly progress meetings
- Review shop drawings and submittals
- Review Contractor payment requisitions
- Review potential change orders
- Respond to Contractor questions during construction (RFIs)
- Develop the punch list for final acceptance of the project
- Perform part time construction observation

Our level of effort includes twenty (25) construction observation site visits over an estimated 90-day construction period. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of the Contractor's work, but rather are to allow us to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based upon this general observation, Tighe & Bond will keep the Town informed about the progress of the Work and will endeavor to guard the Town against deficiencies in the Work. Tighe & Bond will not supervise or have control over the Contractor's work nor have any responsibility for the Contractor's safety precautions or programs.

The construction period schedule assumes the Project will be completed within one construction season.

Exclusions

In an effort to provide you with a reasonable budget for the desired services, we have prepared a detailed scope of services based upon our understanding of the project needs. In this same regard, the following section describes those services that were not included in the development of our budgetary estimate. If these services are required, we will modify our proposal accordingly to meet your needs.

- Coordination and payment for police details
- Easements or land acquisitions assistance
- Environmental Notification Form (ENF), or other, filing(s) with the Massachusetts Executive Office of Energy and Environmental Affairs
- Geotechnical evaluation and/or retaining wall design
- LSP/Contaminated soils related services
- Compaction and other contract conformance testing (this testing will be the responsibility of the Contractor)

Fee

Tighe & Bond will perform the scope of work noted above for a lump sum fee of \$203,100, invoiced monthly based on percentage complete. In the event that the scope of work is increased for any reason, the lump sum fee to complete the work shall be mutually revised by written amendment. Our attached Terms and Conditions is part of this letter agreement.

For information purposes, the below summary provides the anticipated break out of the project. The summary is presented to give the Town a better understanding of how the project budget was developed. Invoices will be submitted based on the total project fee and not individual line item budgets.

Table 1
Fee Breakdown

Task	Activity	Fee
1	Base Plan Development ⁽¹⁾	\$69,900
2	Engineering & Design	\$39,000
3	Permitting	\$26,800
4	Bid Administration Assistance	\$7,000
5	Construction Administration Assistance	\$60,400
Total Project Fee		\$203,100

(1) Includes \$58,000 for survey and soil boring sub-consultant work.



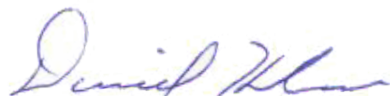
We are prepared to undertake this project immediately upon notice to proceed from the Town. We anticipate Tasks 1 through 3 can be delivered within 40 weeks.

The included schedule and fees are based on the above scope of services and assumptions. The schedule includes reasonable allowances for review and approval times by applicable parties. This schedule may need to be adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by you, or for delays or other causes beyond our reasonable control, including delays due to Force Majeure, including those delays that may incur due to the COVID-19 pandemic.

Thank you for the opportunity to continue providing engineering services to the Town of Hampden. If this proposal is acceptable, please sign below and return one signed copy to our office. Please contact us if you have any questions about the project understanding or our proposed scope of services.

Very truly yours,

TIGHE & BOND, INC.



Daniel Holmes, PE, LEED AP
Senior Project Manager

t: 413.572.3255
e: DSHolmes@tighebond.com



Joseph P. Viamari, Jr., PE, LEED AP
Senior Vice President

t: 413.572.3281
e: JPViamari@tighebond.com

Enclosures: Standard Terms and Conditions Rev 04/2020

ACCEPTANCE:

On behalf of the **Town of Hampden** the scope, fee, and terms of this proposal are hereby accepted.

Authorized Representative

Date



“CLIENT” is defined in the acceptance line of the accompanying proposal letter or the name the proposal is issued to; Tighe & Bond, Inc. is hereby referenced as “CONSULTANT”;
“PROJECT” is defined in the accompanying proposal letter

1. SCHEDULE OF PAYMENTS

1.1 Invoices will generally be submitted once a month for services performed during the previous month. Payment will be due within 30 days of invoice date. Monthly payments to CONSULTANT shall be made on the basis of invoices submitted by CONSULTANT and approved by CLIENT. If requested by CLIENT, monthly invoices may be supplemented with such supporting data as reasonably requested to substantiate them.

1.2 In the event of a disagreement as to billing, the CLIENT shall pay the agreed portion.

1.3 Interest will be added to accounts in arrears at the rate of one and one-half (1.5) percent per month (18 percent per annum) or the maximum rate allowed by law, whichever is less, of the outstanding balance. In the event counsel is retained to obtain payment of an outstanding balance, CLIENT will reimburse CONSULTANT for all reasonable attorney’s fees and court costs.

1.4 If CLIENT fails to make payment in full within 30 days of the date due for any undisputed billing, CONSULTANT may, after giving seven days’ written notice to CLIENT, suspend services and retain work product until paid in full, including interest. In the event of suspension of services, CONSULTANT will have no liability to CLIENT for delays or damages caused by such suspension.

2. SUCCESSORS AND ASSIGNS

2.1 CLIENT and CONSULTANT each binds itself, its partners, successors, assigns and legal representatives to the other parties to this Agreement and to the partners, successors, assigns and legal representatives of such other parties with respect to all covenants of this Agreement. CONSULTANT shall not assign, sublet or transfer its interest in this Agreement without the written consent of CLIENT, which consent shall not be unreasonably withheld.

2.2 This Agreement represents the entire and integrated Agreement between CLIENT and CONSULTANT and supersedes all prior negotiations, representations or Agreements, whether written or oral. This Agreement may be amended only by written instrument signed by both CLIENT and CONSULTANT. References to this agreement include these Terms & Conditions, any accompanying proposal or description of services, as well as any other documents referenced or incorporated therein. In the event one or more provisions of any of the foregoing documents conflict with the provisions of these Terms & Conditions, the provisions of these Terms & Conditions shall control.

2.3 Nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of a third party against CLIENT or against CONSULTANT.

3. STANDARD OF CARE

3.1 In providing services, CONSULTANT will use that degree of care and skill ordinarily exercised under similar circumstances by individuals providing such services in the same or similar locality for similar projects.

4. TERMINATION

4.1 This Agreement may be terminated by either party upon seven days’ written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In addition, CLIENT may terminate this Agreement for its convenience at any time by giving written notice to CONSULTANT. In the event of any termination, CLIENT will pay CONSULTANT for all services rendered and reimbursable expenses incurred under the Agreement to the date of termination and all services and expenses related to the orderly termination of this Agreement.

5. RECORD RETENTION

5.1 CONSULTANT will retain pertinent records relating to the services performed for the time required by law, during which period the records will be made available upon reasonable request and upon reimbursement for any applicable retrieval/copying charges.

5.2 Samples - All soil, rock and water samples will be discarded 30 days after submission of CONSULTANT’s report, unless mutually agreed otherwise or unless CONSULTANT’s customary practice is to retain for a longer period of time for the specific type of services which CONSULTANT has agreed to perform. Upon request and mutual agreement regarding applicable charges, CONSULTANT will ship, deliver and/or store samples for CLIENT.

6. OWNERSHIP OF DOCUMENTS

6.1 All reports, drawings, specifications, computer files, field data, notes, and other documents, whether in paper or electronic format or otherwise (“documents”), are instruments of service and shall remain the property of CONSULTANT, which shall retain all common law, statutory and other reserved rights including, without limitation, the copyright thereto. CLIENT’s payment to CONSULTANT of the compensation set forth in the Agreement shall be a condition precedent to the CLIENT’s right to use documents prepared by CONSULTANT.

6.2 Documents provided by CONSULTANT are not intended or represented to be suitable for reuse by CLIENT or others on any extension or modification of this PROJECT or for any other projects or sites. Documents provided by CONSULTANT on this PROJECT shall not, in whole or in part, be disseminated or conveyed to any other party, nor used by any other party, other than regulatory agencies, without the prior written consent of CONSULTANT. Reuse of documents by CLIENT or others on extensions or modifications of this project or on other sites or use by others on this PROJECT, without CONSULTANT’s written permission and mutual agreement as to scope of use and as to compensation, if applicable, shall be at the user’s sole risk, without liability on CONSULTANT’s part, and CLIENT agrees to indemnify and hold CONSULTANT harmless from all claims, damages, and expenses, including attorney’s fees, arising out of such unauthorized use or reuse.

6.3 Electronic Documents - CONSULTANT cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic writeable format. If CONSULTANT provides documents in writeable electronic format for CLIENT’s convenience, CLIENT agrees to waive any and all claims against CONSULTANT resulting in any way from the unauthorized use, alteration, misuse or reuse of the electronic documents, and to defend, indemnify, and hold CONSULTANT harmless from any claims, losses, damages, or costs, including attorney’s fees, arising out of the unauthorized use, alteration, misuse or reuse of any electronic documents provided to CLIENT.

6.4 Electronic Data Bases – In the event that CONSULTANT prepares electronic data bases, geographical information system (GIS) deliverables, or similar electronic documents, it is acknowledged by CLIENT and CONSULTANT that such PROJECT deliverables will be used and perhaps modified by CLIENT and that CONSULTANT's obligations are limited to the deliverables and not to any subsequent modifications thereof. Once CLIENT accepts the delivery of maps, databases, or similar documents developed by CONSULTANT, ownership is passed to CLIENT. CONSULTANT will retain the right to use the developed data and will archive the data for a period of three years from the date of PROJECT completion.

7. INSURANCE

7.1 CONSULTANT will retain Workmen's Compensation Insurance, Professional Liability Insurance with respect to liabilities arising from negligent errors and omissions, Commercial General Liability Insurance, Excess Liability, Unmanned Aircraft, Cyber Liability, and Automobile Liability during this PROJECT. CONSULTANT will furnish certificates at CLIENT's request.

7.2 Risk Allocation - To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the CONSULTANT to the CLIENT and anyone claiming by or through the CLIENT, for any and all claims, losses, costs or damage, of any nature whatsoever, the liability of CONSULTANT to all claimants with respect to this PROJECT will be limited to an aggregate sum not to exceed \$100,000 or CONSULTANT's compensation for consulting services, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

7.3 Damages – Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither CLIENT nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the PROJECT or to this Agreement. This mutual waiver of certain damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that may be incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both CLIENT and CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this PROJECT.

7.4 CLIENT agrees that any and all limitations of CONSULTANT's liability or waivers of damages by CLIENT to CONSULTANT shall include and extend to those individuals and entities CONSULTANT retains for performance of the services under this Agreement, including but not limited to CONSULTANT's officers, partners, and employees and their heirs and assigns, as well as CONSULTANT's subconsultants and their officers, employees, and heirs and assigns.

8. DISPUTE RESOLUTION

8.1 In the event of a disagreement arising out of or relating to this Agreement or the services provided hereunder, CLIENT and CONSULTANT agree to attempt to resolve any such disagreement through direct negotiations between senior, authorized representatives of each party. If any disagreement is not resolved by such direct negotiations, CLIENT and CONSULTANT further agree to consider using mutually acceptable non-binding mediation service in order to resolve any disagreement prior to proceeding to litigation.

9. SITE ACCESS

9.1 Right of Entry - Unless otherwise agreed, CLIENT will furnish right-of-entry on the land for CONSULTANT to make any surveys, borings, explorations, tests or similar field investigations. CONSULTANT will take reasonable precautions to limit damage to the land from use of equipment, but the cost for restoration of any damage that may result from such field investigations is not included in the agreed compensation for CONSULTANT. If restoration of the land is required greater than those included in the scope of work, upon mutual agreement this may be accomplished as a reimbursable additional service at cost plus ten percent.

9.2 Damage to Underground Structures - Reasonable care will be exercised in locating underground structures in the vicinity of proposed subsurface explorations. This may include contact with the local agency coordinating subsurface utility information and/or a review of plans provided by CLIENT or CLIENT representatives for the site to be investigated. CONSULTANT shall be entitled to rely upon any information or plans prepared or made available by others. In the absence of physically confirmed underground structure locations, CLIENT agrees to accept the risk of damage and costs associated with repair and restoration of damage resulting from the exploration work.

10. OIL AND HAZARDOUS MATERIALS

10.1 If, at any time, evidence of the existence or possible existence of asbestos, oil, or other hazardous materials or substances is discovered, outside of any agreed scope of work or greater than those anticipated in any agreed scope of work, CONSULTANT reserves the right to renegotiate the fees for CONSULTANT's services and CONSULTANT's continued involvement in the PROJECT. CONSULTANT will notify CLIENT as soon as practical if evidence of the existence or possible existence of such hazardous materials or substances is discovered.

10.2 The discovery of the existence or possible existence of hazardous materials or substances, outside or greater than any proposed in the agreed scope of work, may make it necessary for CONSULTANT to take accelerated action to protect human health and safety, and/or the environment. CLIENT agrees to compensate CONSULTANT for the cost of any and all measures that in its professional opinion are appropriate to preserve and/or protect the health and safety of the public, the environment, and/or CONSULTANT's personnel. To the full extent permitted by law, CLIENT waives any claims against CONSULTANT and agrees to indemnify, defend and hold harmless CONSULTANT from any and all claims, losses, damages, liability, and costs, including but not limited to cost of defense, arising out of or in any way connected with the existence or possible existence of such hazardous materials substances at the site.

11. SITE INVESTIGATIONS

11.1 In soils, groundwater, soil gas, indoor air, or other investigations, conditions may vary between successive test points and sample intervals and for locations at or between where observations, exploration, and investigations have been made. Because of the variability of conditions and the inherent uncertainties in such evaluations, explorations, or investigations, changed or unanticipated conditions may occur that may affect overall PROJECT costs and/or execution. These variable conditions and related impacts on cost and PROJECT execution are not the responsibility of CONSULTANT.

11.2 CLIENT recognizes that special risks occur whenever engineering or related disciplines are applied to provide

information regarding subsurface conditions. Even an agreed sampling and testing program, implemented with appropriate equipment and personnel with the assistance of a trained professional performing in accordance with the applicable professional standard of care, may provide data or information which differs significantly from that discovered or encountered subsequently. Environmental, geological, and geotechnical conditions, that CONSULTANT may infer to exist between sampling points may differ significantly from those discovered or encountered subsequently. The passage of time also should be considered, and CLIENT recognizes that due to natural occurrences or direct, or indirect human intervention at or near the site, actual conditions may quickly change. CONSULTANT shall not be responsible for the identification of emerging contaminants for which no current regulatory provisions exist nor shall CONSULTANT be held liable for not identifying or discussing these compounds even if those compounds are detected at a later date. CLIENT realizes that these risks cannot be eliminated. The services included in this agreement are those agreed to, or selected, consistent with CLIENT's risk preferences and other considerations including cost and schedule.

11.3 By authorizing CONSULTANT to proceed with the site investigation services, CLIENT confirms that CONSULTANT has not created nor contributed to the presence of any existing hazardous substances or conditions at or near the site. CLIENT recognizes that there is an inherent risk in drilling, borings, punching or driving probes, excavating trenches or implementing other methods of subsurface exploration at or near a site contaminated by hazardous materials. Further, CLIENT recognizes that these are inherent even through the exercise of the Standard of Care. CLIENT accepts the risk and agrees to defend, indemnify, and hold CONSULTANT and each of CONSULTANT's subcontractors, consultants, officers, directors, and employees harmless against and all claims for damages, costs, or expenses direct or consequential, in connection with a release of hazardous substances, except to the extent that such claims, damages, or losses are adjudicated to have resulted from CONSULTANT's gross negligence or willful misconduct in the performance of the services.

12. FEDERAL AND STATE REGULATORY AGENCY AUDITS

12.1 For certain services rendered by CONSULTANT, documents filed with federal and state regulatory agencies may be audited after the date of filing. In the event that CLIENT's PROJECT is selected for an audit, CLIENT agrees to compensate CONSULTANT for time spent preparing for and complying with an agency request for information or interviews in conjunction with such audit. CLIENT will be notified at the time of any such request by an agency, and CONSULTANT will invoice CLIENT based on its standard billing rates in effect at the time of the audit.

13. CLIENT'S RESPONSIBILITIES

13.1 Unless otherwise stated in the Agreement, CLIENT will obtain, arrange, and pay for all notices, permits, and licenses required by local, state, or federal authorities; and CLIENT will make available the land, easements, rights-of-way, and access necessary for CONSULTANT's services or PROJECT implementation.

13.2 CLIENT will examine CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents and communicate promptly to CONSULTANT in the event of disagreement regarding the contents of any of the foregoing. CLIENT, at its own cost, will obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CLIENT

deems appropriate; and render in writing decisions required by CLIENT in a timely manner.

14. OPINIONS OF COST, FINANCIAL ANALYSES, ECONOMIC FEASIBILITY PROJECTIONS, AND SCHEDULES

14.1 CONSULTANT has no control over cost or price of labor and materials required to implement CLIENT's PROJECT, unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs, competitive bidding procedures and market conditions, time or quality of performance by operating personnel or third parties, and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, CONSULTANT makes no warranty, expressed or implied, that CLIENT's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from any opinions, analyses, projections, or estimates which may be provided by CONSULTANT. If CLIENT wishes additional information as to any element of PROJECT cost, feasibility, or schedule, CLIENT at its own cost will employ an independent cost estimator, contractor, or other appropriate advisor.

15. CONSTRUCTION PHASE PROVISIONS

The following provisions shall be applicable should the CONSULTANT be retained to provide Construction Phase Services in connection with the PROJECT:

15.1 CLIENT and Contractor - The presence of CONSULTANT's personnel at a construction site, whether as onsite representatives or otherwise, does not make CONSULTANT or CONSULTANT's personnel in any way responsible for the obligations, duties, and responsibilities of the CLIENT and/or the construction contractors or other entities, and does not relieve the construction contractors or any other entity of their respective obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and for providing and/or enforcing all health and safety precautions required for such construction work.

15.2 Contractor Control - CONSULTANT and CONSULTANT's personnel have no authority or obligation to monitor, to inspect, to supervise, or to exercise any control over any construction contractor or other entity or their employees in connection with their work or the health and safety precautions for the construction work and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except CONSULTANT's own personnel.

15.3 On-site Responsibility - The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT an increased degree of confidence that the completed construction work will conform generally to the construction documents and that the design concept as reflected in the construction documents generally has been implemented and preserved by the construction contractor(s). CONSULTANT neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.

15.4 Payment Recommendations - Recommendations by CONSULTANT to CLIENT for periodic construction progress payments to the construction contractor(s) are based on CONSULTANT's knowledge, information, and belief from selective observation that the work has progressed to the point indicated. Such recommendations do not represent that

continuous or detailed examinations have been made by CONSULTANT to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that CONSULTANT has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to CLIENT free and clear of liens, claims, security interests, or encumbrances; or that there are no other matters at issue between CLIENT and the construction contractors that affect the amount that should be paid.

15.5 Record Drawings - Record drawings, if required as part of CONSULTANT's agreed scope of work, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. CONSULTANT is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

16. DESIGN WITHOUT CONSTRUCTION PHASE SERVICES

The following provisions shall be applicable should the CONSULTANT be retained to provide design services but not be retained to provide Construction Phase Services in connection with the PROJECT:

16.1 It is understood and agreed that the CONSULTANT's Scope of Services under this proposal does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the CLIENT or others. The CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the CLIENT waives any claims against the CONSULTANT that may be in any way connected thereto.

16.2 In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and subconsultants (collectively, CONSULTANT) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the CONSULTANT.

17. SCHEDULE

17.1 The CLIENT agrees that the CONSULTANT is not responsible for damages arising directly or indirectly from any delays for causes beyond the CONSULTANT's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters, pandemics, or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the CLIENT or the CLIENT's contractors or consultants.

17.2 The CONSULTANT's schedule includes reasonable allowances for review and approval times required by the CLIENT, performance of services by the CLIENT's consultants, and review and approval times required by public authorities having jurisdiction over the PROJECT. This schedule shall be equitably adjusted as the PROJECT progresses, allowing for changes in scope, character or size

of the PROJECT requested by the Client, or for delays or other causes beyond the Consultant's reasonable control.

18. MISCELLANEOUS TERMS

18.1 GOVERNING LAW - The CLIENT and the CONSULTANT agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of the jurisdiction where the PROJECT is located, without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

18.2 LENDERS' REQUIREMENTS- The CONSULTANT shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of the CONSULTANT, increase the CONSULTANT's contractual or legal obligations or risks, or adversely affect the availability or cost of its professional or general liability insurance.

18.3 CORPORATE PROTECTION - Notwithstanding anything to the contrary contained herein, the CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Massachusetts corporation, and not against any of the CONSULTANT's individual employees, officers or directors.

18.4 TITLES - The section headings used in this Agreement are intended principally for convenience and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the parties to this Agreement.

18.5 Upon execution, these terms as incorporated into the accompanying proposal represent the final intent of the parties. Any modification, rescission, or waivers of these terms shall only be effective and binding if agreed to in writing by the parties.