

August 29, 2018

Maurice Goulet
Superintendent of Public Works
55 North Meadows Road
Medfield, MA 02052
mgoulet@medfield.net

Re: **Danielson Mill Dam**
Hazard Potential Classification Review
Medfield, Massachusetts
(PARE Proposal No. MP097.18)

Dear Mr. Goulet:

In response to your request and our recent meeting, Pare Corporation (Pare) is pleased to provide the Town of Medfield, Massachusetts (Client) with this Technical Proposal for the completion of a review of the hazard potential classification for the Danielson Mill Dam in Medfield, Massachusetts. This proposal is subject to the attached Terms and Conditions, which are an integral part of this proposal.

The scope of the work includes the completion of a simplified dam break analysis and other evaluations to support a potential request to change the hazard potential classification of the dam from Significant (Class II) to Low (Class III). Based upon visual reconnaissance, the roadway downstream of the dam (Homestead Drive) is higher than the top of the dam; as such, the culvert beneath the roadway and the roadway embankment may attenuate the peak discharge associated with dam failure and limit the potential for overtopping of High Street (Rt. 27), the next river crossing downstream of Homestead Drive. Should this dam break analysis suggest limited damage to property in the downstream area, the dam may be more appropriately classified as a Low hazard potential structure.



SCOPE OF WORK (Basic Services)

The following scope of work presents the anticipated effort to undertake the proposed evaluations.

Task 100: Hazard Potential Review

In accordance with 302 CMR 10.06 (6) Hazard Reconsideration, an owner may at any time request the Commissioner to reconsider the hazard determination. Given the apparent limited incremental impacts associated with a failure of the dam due to apparent attenuation by the Homestead Drive roadway embankment, Pare will review potential impacts associated with failure of the dam present the findings within a hazard potential review request to be submitted to the Office of Dam Safety.

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Pare will prepare a HEC-RAS 5.03 2D dam break model. The 2D program solves the depth-averaged dynamic wave equation with an implicit finite volume numerical method to provide a two-dimensional representation of the breach flood wave in the downstream area. The computational mesh for the evaluation will be based on a terrain model developed from available MassGIS statewide elevation data (LiDAR) and simplifying assumptions regarding variations in Mannings roughness (composite Mannings n value), cell sizes, and a reduction in manual two-dimensional break lines.

For the initial dam break model, Pare will assume that the level of the impoundment is at the crest of the dam with base flow in the downstream channel equal to the uncontrolled discharge capacity of the spillway.

The dam breach formation parameters will be developed using the built-in functions in HEC RAS. To develop the dam breach hydrograph, Pare will either use a HEC RAS Storage Area to define the impoundment volume relationship or HydroCAD software. Impoundment and dam parameters (crest width, structural height, embankment slopes, Pond volume/surface area, etc.) will be based on available Phase I Report data, available LiDAR data, and/or survey data collected as part of this work.

All roadway structures within the inundation area will be modeled as culverts. Sequential failure of downstream dams or embankments will not be initiated as part of this study.

Mapping of the approximate inundation area will be developed based upon available LiDAR data. Mapping will indicate approximate peak flow, time to peak, and flood depths at critical locations downstream of the dam. The model will extend from the dam to the swamp downstream of Route 27 / Spring Street.

Pare will present the findings of the dam break and hazard review within a summary letter report presenting the model assumptions, impacts to downstream infrastructure, and implications to the hazard potential classifications. Should the model suggest reclassification, Pare will submit the letter as technical backup to a hazard reclassification request form. Should the model results be inconclusive, the report will include recommendations to be completed under supplemental agreement for refining the model to further refine the findings. Should the model suggest that the dam is appropriately classified, the letter will include a recommendation to maintain the significant hazard potential classification.

Reports and deliverables will be provided in PDF format via email. If justified, the hazard reclassification request will be submitted in hard copy and PDF format on CD.

It should be noted that completion of the studies included as part of the proposed scope of work does not guarantee a reduced hazard potential classification.

Task 101: Hydrologic & Hydraulic Analyses / Updated Dam Break Model (if required)

Upon review of the hazard potential review completed as part of Task 100, MADCR may request that detailed H&H modeling be completed to evaluate the potential impacts of dam failure during varying routed storm events, as opposed to the top of dam assumption included as part of Task 100.

Pare will complete a detailed H&H analysis utilizing data collected as part of the survey scope of work supplemented with available land use and topographic information. The analysis will be developed utilizing the HydroCAD modeling software to assess the performance of the dam during the spillway design flood (SDF). Pare will develop models to evaluate the hydraulic capacity of the dam for a variety of storms



including the 25-year, 50-year, and 100-year (SDF) storm events. In developing the inflow hydrographs for these storm events, Pare will utilize current rainfall data available through NOAA within Atlas 14. Inflow hydrographs to the impoundment will be determined utilizing HydroCAD v. 10.00 software to approximate runoff rates using the Soil Conservation Service (SCS) TR-20 Curve Number (CN) and runoff methodologies, impacts of storage and routing of flows through the impoundment, discharges through the outlet structure, and maximum water surface elevations. The watershed will be modeled as a single watershed.

The outflow hydrograph will be imported to the HEC-RAS 2D dam break model developed as part of Task 100 to provide a refined approximation of downstream impacts during the modeled storm events. Refined results will be submitted to ODS as a supplement to the original hazard potential classification change request.

Task 200: Follow Up Inspections

As indicated in the Dam Safety Order, the Town is required to complete follow up inspections at the dam every six months until repairs are implemented to address the noted deficiencies resulting in the Poor condition rating.

During this task, Pare will assess the condition of the dam and regulating structure(s). The condition of the structure will be reviewed by means of an on the ground inspection of the dam and its appurtenant structures. The assessment will be visual in nature and will include accessible portions of the upstream slope, crest, downstream slope, abutments, downstream area, and spillway. Should evidence of piping, discontinuity or blockage within drains or conduits be observed, recommendations for warranted further evaluations will be provided.

The work will be overseen by a registered professional engineer with a minimum of 5 years of experience in dam engineering. During the course of the field effort, digital photographs of specific deficiencies, as well as photographs of general alignments and configurations will be obtained for record and comparison to existing photographs. Photographs will include a scaled reference, when appropriate, and will be included on a site sketch depicting the approximate location and direction of the photograph.

Field work will be performed during near normal pool elevations. Lowering or draining of the impoundment prior to inspection removes the normal load on the structure and may obscure certain conditions that might otherwise be detectable if inspected under the normal operating environment of the structure.

Pare will prepare a letter report summarizing the findings of the assessment utilizing the format provided by MADCR. Upon completion of the report, Pare will provide the dam owner with a review copy. Upon authorization by the Owner, Pare will forward a final copy, sealed by a professional engineer registered in Massachusetts, to the Office of Dam Safety in the format and numbers as required per the dam safety order.

Since the last follow up inspection was apparently completed in October 2017, the first follow up inspection was due in April 2018. As part of this scope of work, Pare has included the completion of two follow up inspections, one within 30 days of receipt of Notice to Proceed and a second inspection approximately 6 months later.

ACTIVITIES NOT INCLUDED IN THIS PROPOSAL

The following activities are not included as part of this proposal. Should it be determined that these activities



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are necessary; Pare can undertake these activities as additional services through a contract addendum.

- Underwater Inspections
- Phase II Inspection / Evaluation
- Subsurface Explorations
- Seepage and Stability Analyses
- Design for repairs or remedial measures
- Wetland Delineation / Permitting
- Emergency Action Plan / Operations and Maintenance Manual preparation

TASKS TO BE PERFORMED BY THE CLIENT

During the inspection, some information and tasks will need to be provided or performed by the Client. This includes the following:

1. Providing access to all areas of the dam.
2. Copies of any previous reports, inspections, or other historical information regarding the dam.
3. Records of water levels and instrument readings, if any.

BASIS OF CHARGES AND CONDITIONS OF ENGAGEMENT

Town of Medfield (herein also referred to as “Client”) shall pay Pare for Basic Services rendered as described above accrued time and expenses.

Rates for personnel categories and for reimbursable expenses are shown on the attached Schedule of Fees. The conditions of engagement are detailed in the attached Statement of Terms and Conditions (Exhibit B), which is an integral part of this proposal.

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

Pare reserves the right to renegotiate or adjust the fee accordingly if its Proposal for Service is not accepted within a ninety (90) day period.

PERIOD OF SERVICE

The time period for performance of the services set forth in the Scope of Services shall be 210 days from receipt of a signed contract/notice to proceed.

Additional services may materially add to the time required to complete the work of the Project. Pare Corporation will be entitled to an equitable adjustment in the Period of Service as a result of services added.

ANTICIPATED CHARGES

Based upon the defined scope of work presented above, Pare anticipates completing the Scope of Services



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described above for the estimated fee as indicated below:

Task 100: Hazard Potential Review	\$ 6,500.00	
Task 101: H&H analysis / Updated Dam Break Analysis	\$ 7,000.00	(if required)
Task 200: Follow Up Inspection (1 st)	\$ 1,500.00	
Task 200: Follow Up Inspection (2 nd)	<u>\$ 1,250.00</u>	
ANTICIPATED TOTAL	\$16,250.00	

This represents our best judgment at this time as to the effort required to achieve the stated objectives. It must be recognized that unforeseen conditions, which become evident during the course of the studies, may alter or increase the effort required. You will be notified of any changes requiring an increase in budget, and we will not exceed the recommended budget without your prior approval.

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Thank you for the opportunity to submit this proposal. We look forward to providing you with dam engineering services to meet your needs in completing the required dam safety evaluations in accordance with 310 CMR 10.00 Commonwealth of Massachusetts Dam Safety Regulations. If you have any questions, please do not hesitate to call us at 508.543.1755.

Sincerely,

PARE CORPORATION

Allen R. Orsi, P.E.
Vice President

Enclosures:

- Schedule of Fees
- Statement of Terms and Conditions

SCHEDULE OF FEES

For Proposal for Services, dated August 29, 2018
(Pare Proposal No. MP097.18)

LABOR:

Engineer	\$ 105.00/Hour
Senior Engineer	\$ 125.00/Hour
Project Engineer	\$ 145.00/Hour
Senior Project Engineer	\$ 165.00/Hour
Managing Engineer	\$ 185.00/Hour
Principals & Officers	\$ 225.00/Hour
Environmental Scientist	\$ 90.00/Hour
Senior Environmental Scientist	\$ 120.00/Hour
Principal Environmental Scientist	\$ 150.00/Hour
Resident Project Representative	\$ 95.00/Hour
Senior Resident Project Representative	\$ 105.00/Hour
CADD Operator	\$ 100.00/Hour
Senior CADD Operator/Designer	\$ 115.00/Hour
Engineering Technician	\$ 100.00/Hour
Senior Engineering Technician	\$ 115.00/Hour
Clerical/Office Personnel	\$ 75.00/Hour

REIMBURSABLE EXPENSES:

Mileage (at Federal Standard Rate)	\$ 0.545/Mile
Printing/Copying Wide Format (in-house)	\$ 0.15/Square Foot
Photocopying (in-house)	\$ 0.10/Copy
Outside Services and Out-of-Pocket Expenses	Cost plus 10%

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

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

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





STATEMENT OF TERMS AND CONDITIONS

Attached to and made a part of the Agreement for Professional Services dated August 29, 2018, by and between the Town of Medfield (Client) and Pare Corporation, (Pare) in respect of the Danielson Mill Dam Hazard Potential Classification Review – Medfield, MA (Project) described therein.

SECTION 1. SERVICES TO BE PROVIDED

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

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

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

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

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

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



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

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

SECTION 2. BILLING AND PAYMENT

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

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

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

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

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



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

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

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

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

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

SECTION 3. ADDITIONAL SERVICES

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

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

SECTION 4. REIMBURSABLE EXPENSES

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

SECTION 5. CLIENT'S RESPONSIBILITIES

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



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

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

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

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

SECTION 6. INSURANCE

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

SECTION 7. STANDARD OF CARE

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

SECTION 8. USE OF DOCUMENTS

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

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



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

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

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

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

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

SECTION 9. OPINIONS OF PROBABLE COST

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



SECTION 10. CERTIFICATIONS

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

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

SECTION 11. LIMITATION OF LIABILITY

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

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

SECTION 12. SERVICES MADE NECESSARY BY LACK OF CONTRACTOR PERFORMANCE

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

SECTION 13. HAZARDOUS WASTE/ASBESTOS/CONTAMINANTS

13.1 In consideration of the substantial risks to Pare involving or relating to the actual or threatened release, escape or discharge of hazardous waste, asbestos and/or other contaminants, it is agreed that Client to the fullest extent permitted by law, shall release and indemnify and hold harmless Pare and its consultants, agents and employees, from and against all claims, damages, losses and expenses, direct and



indirect, including but not limited to attorneys' fees and defense costs, arising out of or resulting from the performance of any services by Pare, or claims against Pare related to, involving or arising out of hazardous waste, asbestos or other contaminants.

SECTION 14. INDEMNIFICATION

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

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

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

SECTION 15. SUSPENSION OF SERVICES

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

SECTION 16. DISPUTE RESOLUTION

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

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

16.3 On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representative and shall meet within ten (10) days after the service of notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of the meeting. Should the parties themselves be unable to agree on a resolution of the



dispute, then the parties shall proceed with mediation in accordance with the mediation rules of the American Arbitration Association. The cost of mediation shall be borne equally by both parties.

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

SECTION 17. TERMINATION

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

SECTION 18. TITLES

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

SECTION 19. GOVERNING LAW

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

SECTION 20. INTEGRATION

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

SECTION 21. SEVERABILITY AND SURVIVAL

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

SECTION 22. SUCCESSORS AND ASSIGNS

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

22.2 Neither Client nor Pare shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 23.1 and except to the extent that the effect of



EXHIBIT B

this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Pare from employing such independent consultants, associates, and subcontractors as he may deem appropriate to assist him in the performance of services hereunder.

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

SECTION 23. ENTIRE AGREEMENT

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

(END)