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# Client Authorization

New Contract

Date: February 21, 2022

Amendment

Project No. TBD

Proposal No. 81432.22

Project Name: Middlebury Rail Sidewalk

To:	Cost Estimate	
	Task Name	Total
Town of Middlebury Dan Werner 1020 S. Rt 7 Middlebury, VT 05753	Engineering & Permitting Services:	\$26,750
	<input type="checkbox"/> Lump Sum	<input type="checkbox"/> Time & Expenses
	<input checked="" type="checkbox"/> Cost + Fixed Fee	<input type="checkbox"/> Labor Multiplier

Email: [dwerner@townofmiddlebury.org](mailto:dwerner@townofmiddlebury.org)

Phone No: 802-388-4045

Estimated Date of Completion: September 30, 2023

## Project Description

Vanasse Hangen Brustlin, Inc. ("VHB") understands that the Town of Middlebury ("Client") seeks design and permitting services associated with the construction of a concrete sidewalk extension along the west side of the Vermont Railway tracks from the Amtrak Rail Platform and parking lot south to Lazarus Park. The project includes approximately 1,000 linear feet of new sidewalk and two (2) ADA-accessible pedestrian crosswalks.

VHB's Scope of Services will generally follow the VTrans Municipal Assistance ("MA") guidelines as set forth in the MA Consultant Contract provisions, MA Guidebook, and the MA Project Development process with specific modifications identified herein.

VHB's detailed Scope of Work is as follows:

### Task 1.0 Project Kick-off

VHB will prepare for and attend a virtual Project Kick-off Meeting with representatives from the Town to initiate the exchange of information between Project team members and establish communication protocols, near-term schedules and action items. This meeting will also help establish a uniform understanding of Project scope, relevant issues and expectations. VHB will arrange to collect existing, available information from the Town, including tax maps, roadway records, deed information and utility information. VHB will facilitate this meeting and take notes to document the discussions and decisions made and to distribute to parties of interest.

*Deliverables: Kick-off Meeting Materials, Meeting Notes*

### Task 2.0 Topographic Survey and Base Mapping

#### 2.1: Topographic Survey/Right-of-Way/Property Lines

VHB will complete a field survey, and compile right-of-way, and property records provided by the Town and the VTrans Rail Section to prepare base plans for the Project. The survey limits are expected to cover approximately 1,500 feet in length and 50 feet in width along the Project corridor and will supplement prior surveys and as-built drawings from the Middlebury Rail and Tunnel project.

- Research - VHB will compile the tax maps and deeds provided by the Town and right-of-way information from VTrans to determine existing property owner's boundary line locations. Available lister information, and deed copies will be provided by the Town to assist in the determination of boundary lines and existing rights-of-way.

- Field Survey – VHB will conduct a topographic field survey of the project area to develop base mapping for the design. This information will be combined with the property records to complete base mapping for the Project.

## 2.2: Utility Information

VHB will request plans of existing and planned facilities from the public and private utility agencies servicing the area. Existing record utilities such as sewer, water, telephone, cable, electric, etc., will be shown on the base plan from these record drawings and as-built drawings from the Middlebury Rail and Tunnel project.

*Deliverables: Three-dimensional base plan; right-of-way limits delineated and shown on base plan*

## **Task 3.0 Conceptual (25 Percent) Plans**

### 3.1 Conceptual Plans

In preparing the Conceptual Plans, VHB anticipates the new sidewalk will follow the existing edge of pavement or curb line of the Marble Works driveway. Due to an existing ground-mounted transformer located near the south end of the alignment, VHB will work closely with Town staff to perform an alternatives analysis and ensure that an optimal alignment is selected for the sidewalk to minimize overall utility or right-of-way impacts. This coordination may take the form of developing several alternatives for an alignment and performing an alternatives analysis, a field walk with Town staff to “ground-truth” an initial alignment, and discussions with abutting property owner(s) before proceeding with the development of the Conceptual Plan set.

VHB will prepare Conceptual Plans and a conceptual construction cost estimate for the selected sidewalk alignment. These plans will indicate the existing topography and other base information, and illustrate the proposed work. The Conceptual Plans will include the following sheets:

- Title Sheet
- Plan and Profile Sheets showing existing and proposed features
- Approximate right-of-way lines and construction limits
- Typical Section(s) for the proposed improvements
- Cross Sections (at critical locations)

Together, these drawings will include the information generally necessary to define the Project and will include information such as sidewalk width, material, and thickness, drainage and erosion control features, limits of construction, and any pavement markings and signs.

VHB will submit an electronic (.pdf) copy of the Conceptual Plans and construction cost estimate to the Town. The conceptual cost estimate will be prepared in the standard iPD Web Estimator format and will be submitted in electronic (.pdf) format. VHB will develop the construction cost estimate utilizing standard VTrans pay items and unit prices.

*Deliverables: Conceptual Plans, conceptual cost estimate*

### 3.2 Public Meeting

VHB will prepare for and facilitate a Public Meeting which will likely be a hybrid meeting with both an on-line and in-person component. The meeting will be a forum to show the intended design to the Town, affected owners, and general public, and to solicit input on the design. VHB will explain the Project development process, present the design plans in easily understandable terms, answer questions, and discuss any issues or concerns that attendees may have. VHB will prepare notes of the meeting and distribute them to the Town and VTrans. Comments generated through the meeting process will be incorporated into the Preliminary Plans as deemed appropriate by the Project team. VHB assumes the Town will advertise the meeting to encourage public participation.

*Deliverables: Public Meeting presentation and meeting notes*

## **Task 4.0 Resource Constraints**

### 4.1 Natural Resource Identification

An initial screening of available natural resources mapping performed as part of this proposal preparation did not identify any significant resource concerns. Based on the initial review of previously mapped natural resources, VHB does not anticipate encountering significant natural resources along the corridor. VHB assumes that habitat for rare, threatened, and endangered plant species is not present within the project corridor and that surveys for such plants will not be required. Similarly, it is assumed that no cutting of mature trees will be required and therefore no assessment of potential bat roost trees will be required. VHB does not expect to encounter contaminated waste as the Project corridor is located within areas of clean fill from the recent Vermont Railway project.

VHB will prepare a brief Natural Resources Memorandum describing the methods used for the database review and field investigations, the findings, and the outcome of coordination with the regulatory agencies. This report will include a map of the delineated feature(s) and representative photographs.

*Deliverables: Brief Natural Resources Memorandum*

### 4.2 Historical/Archaeological

All federally funded projects are subject to review under Section 106 of the National Historic Preservation Act of 1966. Section 106 seeks to avoid, minimize, and mitigate adverse effects to historic and archaeological resources. The Vermont Division for Historic Preservation's ("VDHP") has reviewed the proposed project to identify the project's potential impacts to historic buildings and structures, historic districts, historic landscapes and settings, and to known or potential archaeological resources. Based on their review, VDHP has determined that there will be No Adverse Effect on historic or archaeologically sensitive resources provided that the Town receives approval for the final plans from VDHP.

### 4.3: Section 4(f) Resources

Federally funded transportation projects are subject to Section 4(f) of the Department of Transportation Act of 1966. VHB anticipates that some right-of-way (easements) will be required for construction of the new sidewalk sections. Easements from historic properties, archaeological resources, publicly owned parks, or wildlife or waterfowl refuges, result in a "use" of Section 4(f) resources. VHB anticipates that these easements or acquisitions will not create and adverse effect on the resources and therefore will require a Section 4(f) *de minimis* determination.

VHB will provide a schedule of easements which will identify the property, the size of the easement (in square feet), and the purpose of each easement. This information can be provided to the VTrans Historic Preservation Officer in order to complete the Section 4(f) determination.

*Deliverables: Schedule of easements on Section 4(f) properties*

### 4.4: Other Permitting and Investigations

The sidewalk construction will involve significantly less than the one acre threshold for State stormwater permits. VHB does not anticipate the need for an Operational stormwater permit or a Construction stormwater permit. VHB does not anticipate impacts to wetlands or waters of the United States, and therefore no Vermont Wetland Permit or Section 404 permit from the US Army Corps of Engineers.

VHB will reach out to the Act 250 District Commission Coordinator to determine if any existing Act 250 permits exist within the Project area, and whether any permit amendments would be triggered by the Project. VHB assumes that an Act 250 permit(s) will not be required or amended as part of this Project.

VHB anticipates that a Section 1111 State Highway Access and Work Permit will not be required for the sidewalk construction as the sidewalk is not located within the right-of-way of a State highway; however, the sidewalk will occupy

the existing State right-of-way for the Vermont Railway. Based on our past experience, VHB anticipates that the Town will need to enter into a lease agreement between the Town, VTrans, and Vermont Railway in order to occupy the State's right-of-way. VHB will facilitate discussions between the parties, but anticipates the preparation of the lease will be done by VTrans.

#### 4.5: Categorical Exclusion Document

VHB will investigate natural and cultural resources within the Project limits to support the Town in satisfying National Environmental Policy Act ("NEPA") requirements. Based upon an initial resource review and the relatively limited nature of the planned construction it is anticipated that this Project will likely require a Categorical Exclusion ("CE") in accordance with NEPA requirements. Past experience suggests that the Project will also likely qualify for a Programmatic CE ("PACE"), which has fewer required resources to assess. VHB will prepare the VTrans environmental analysis sheet and supporting documentation and submit these documents to VTrans for review and concurrence. VTrans will be responsible for evaluating the analysis, formalizing the CE, and arranging for the concurrence of the Federal Highway Administration (if required).

*Deliverables: Categorical Exclusion worksheet and supporting documentation*

### **Task 5.0 Preliminary (60 Percent) Plans**

#### 5.1: Preliminary Plans

Once the NEPA process has concluded, the VHB team will begin developing Preliminary Plans. The Preliminary Plans will incorporate any comments on the Conceptual Plans and will incorporate further detail, including any stormwater management features, required erosion prevention and sediment control measures, and anticipated easements. The Preliminary Plans will contain:

- Title Sheet
- Typical Sections
- Base Plan with a Project centerline and existing ROW information
- Plan and Profile Sheets
- Cross Sections
- Driveway treatments
- Drainage details
- Erosion prevention and sediment control narrative and details
- Signs and pavement markings
- Traffic Control Plans and Narrative

In addition to the preliminary plans, VHB will develop a revised Engineer's Estimate using iPD Web Estimator software. VHB will submit an electronic (.pdf) set of the Preliminary Plan and estimate to the Town and VTrans.

#### 5.2: Utility Coordination and Relocation Routes

VHB will send copies of the Preliminary Plans to the utility providers in the area, and request they design relocation routes if deemed necessary during the development of conceptual alternatives. The utilities will then be asked to design new layouts of their utilities to show positions that do not conflict with the new sidewalk alignment. VHB will request that the utilities provide plans of the relocated routes to VHB so that VHB can show the relocated positions in subsequent plan submissions.

*Deliverables: Preliminary Plans, preliminary cost estimate*

### **Task 6.0 Right-of-Way Plans**

#### 6.1: Right-of-Way Plans

Most of the sidewalk will be constructed within the State's railroad right-of-way ("ROW"), but a portion will also run through private properties. VHB will work with the Town to coordinate with VTrans and the Railroad on an agreement to construct the sidewalk within the Railroad ROW and with Marble Works on impacts to their property. Using the Project construction

limits and any anticipated need for temporary rights during construction, VHB will determine the need for additional right-of-way, including permanent and temporary easements, to construct the project.

Existing ROW, and all areas of additional ROW, whether temporary or permanent, will be clearly indicated on ROW plans prepared by VHB in accordance with standard survey practices. Draft ROW plans and draft deeds (deeds to be prepared by the Town) will be submitted to VTrans for review and approval prior to negotiating with property owners. Easement language will be consistent with guidance provided by the VTrans ROW section. ROW plans will include all of the Preliminary Plan elements with the addition of the following:

- Right-of-Way detail sheet
- Property Acquisition Table

## 6.2 ROW Coordination

For purposes of this proposal, VHB has assumed that the Town will be responsible for any required appraisals, property owner negotiations, and acquisitions needed to complete the Project. VHB will only be responsible to facilitate discussions between VTrans, Vermont Railway and the Town, and to prepare ROW plans.

*Deliverables: Right-of-way plans*

### **Task 7.0 Final (85 Percent) Plans**

Once comments are received from the Preliminary Plans, input has been received from affected utilities, and any right-of-way agreements have been secured, the VHB team will prepare Final Plans along with draft bid document and an associated cost estimate for municipal and VTrans review and concurrence. These plans will incorporate comments and conditions received from permitting agencies. Final utility relocations will be shown. ROW plans showing acquisition lines and any agreements made with property owners will be included.

VHB will develop any Project special provisions to cover items not contained in the VTrans 2018 Standard Specifications for Construction or those items that vary from the standard specifications.

VHB will submit the Final Plans, draft bid documents and revised construction estimate to the Town and VTrans in an electronic (.pdf) format.

*Deliverables: Final Plans, draft bid document, cost estimate*

### **Task 8.0 Contract Plans, Bidding, and Award**

#### 8.1: Contract Plans

VHB will prepare Contract (100 Percent) Plans along with an updated list of items, quantities and an associated cost estimate for municipal and VTrans Project Supervisor approval. These plans will incorporate any final changes since the review and acceptance of Final Plans. These plans will be signed and stamped by a licensed Professional Engineer.

#### 8.2: Construction Bid Package

Once the Contract Plans are approved, VHB will prepare a Construction Bid Package to include the following items:

- Complete Contract (100 Percent) plans.
- Construction cost estimate.
- Final utility relocations, clearances, and special provisions.
- Right-of-way clearances and special agreements.
- Construction special provisions.
- All necessary permits acquired and conditions noted.
- Construction Contract specifications.
- Bid Documents including instructions to bidders, bid form and all required federal documents

The Construction Bid Package will be based on the standard Bid Documents prepared by the VTrans MA available on their web site.



### 8.3: Bid Process

VHB will prepare a bid advertisement and support the Town by getting the Project advertised on the Vermont Bid System, which is where most construction contractors find their bid opportunities. VHB assumes that the Town will be responsible for advertising for bids locally, if desired. VHB will be available during the bidding process to answer technical questions about the Project design. Once bids are received and opened by the Town, VHB will confirm that all required components of the bid have been submitted, conduct an analysis of the bids, and provide a recommendation to the municipality and VTrans on award of the contract.

*Deliverables: Construction bid package, bid advertisement for publishing, bid analysis*

### **Task 9.0 Construction Services**

No construction support services are included at this time. If desired by the Town, VHB can assist during construction under a supplemental agreement.

### **Project Schedule**

VHB's proposed Project schedule is shown below, which targets a Spring of 2023 construction start date. In developing this schedule, VHB has made every attempt to accommodate necessary timelines for Town plan review, CE processing, and the right-of-way process. It is often difficult to accurately predict the nature of these particular schedule elements, but VHB will do our best to ensure that the scope tasks that are within VHB's control are processed in an efficient and timely manner.

- Kick-Off Meeting: March 2022
- Topographic Survey & Base Mapping: March 2022
- Conceptual Plans: March - April 2022
- Resource Constraints: April 2022
- NEPA Process: May 2022 – September 2022
- Preliminary Plans: May 2022
- Right-of-Way Plans: June 2022
- ROW Process: June – August 2022
- Final Design: August – September 2022
- Contract Plans/Bid Package: October 2022

### **INVOICING**

VHB will send itemized invoices to Client once every four-week accounting period. Refer to the attached VHB Standard Terms & Conditions for terms of payment.

### **CLIENT FURNISHED INFORMATION**

It is understood that VHB will perform services under the sole direction of Client. In the performance of these services, VHB will coordinate its efforts with Client and others as required. VHB will rely upon the accuracy and completeness of Client-and/or others-furnished information in connection with the performance of services. Client and/or others shall provide VHB with Project-related technical data, including, but not limited to, the following:

- Relevant property and right-of-way information.
- Safe and allowed access to the subject site.

### **GENERAL ASSUMPTIONS/LIMITATIONS**

VHB has made the following assumptions in the preparation of this scope of work and cost estimate. If the services below are required, VHB can prepare a separate scope of services and fee, at the request of Client.

- The Town will provide copies of the existing deeds for all of the property owners along the corridor, and any available roadway or right-of-way records.
- Town representatives will prepare deeds/easement agreements for any required rights beyond the existing right of way. VHB will prepare right of way plans that can be used to prepare the agreements. Also, the Town will be responsible for any appraisals/waiver valuations needed to fix compensation, and the Town will conduct all negotiations with affected land owners, including the State of Vermont.



- The Town is responsible for arranging for permission to enter lands outside the ROW for VHB to complete topographic and natural resources surveys.
- VHB will prepare for and attend one public meeting at the Town offices.
- Neither geotechnical analysis nor the design of retaining walls will be needed for the support of the sidewalk. If retaining walls are found to be necessary, design for these features can be undertaken through a supplemental agreement.
- The Town is responsible for all permit application fees (if any).
- This scope of services does not include the preparation of permit applications other than those noted above, including an Act 250 permit application or application to amend an existing Act 250 permit(s).
- Oil and Hazardous Materials ("OHM") and other potential hazard assessments are not included.
- Site surveys (e.g., boundary lines, topographic, existing conditions) are not included.
- Construction stakeout, construction surveys, or as-built surveys or associated documentation are not included.
- Exterior lighting design is not included.
- Design of ramps, stairs, walls, or other site structures is not included.
- State permit applications other than those listed above are not included.
- Permit application fees are not included, and, if necessary, will be the responsibility of the Client to pay.
- Site electrical and telecom design is not included.

VHB field personnel will follow the State of Vermont and VHB requirements/guidance regarding Covid-19 protection in effect on the date this authorization is prepared. To the extent that new or additional requirements become effective, delays in completing the work and/or additional costs may result, and VHB will communicate with Client in advance of proceeding, to confirm that our work should continue.

Prepared by: Cierra Ford

Document Approval: David Saladino, PE

Please execute this Client Authorization for VHB to proceed with the above scope of services at the stated estimated costs. No services will be provided until it is signed and returned to VHB.

Subject to attached terms & conditions

Subject to terms & conditions in our original agreement

**VANASSE HANGEN BRUSTLIN, INC. AUTHORIZATION**

**CLIENT AUTHORIZATION (Please sign original and return)**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print David Saladino, PE

Print: \_\_\_\_\_

Title: Managing Director

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# COST PROPOSAL - VHB LABOR SUMMARY

<b>Town of Middlebury</b> <b>Rail Sidewalk</b> <b>LABOR BUDGET</b>									
TASK DESCRIPTION	Technical Advisor	Project Manager	Senior Project Engineer	Project Engineer	Environmental Scientist	Surveyor	Admin. Support	Total Hours	Total Labor Costs
<b>PHASE A: Project Definition</b>									
<b>1.0 Kickoff Meeting</b>									
Prepare for & attend meeting		3						3	\$ 307
<b>2.0 Topographic Survey &amp; Base Mapping</b>									
ROW and Deed Information						4		4	\$ 324
Utility Location				2		2		4	\$ 336
Topo survey and base map preparation		2		16		22		40	\$ 3,377
<b>3.0 Conceptual (25%) Plans</b>									
Preparation of Conceptual Plans	1	6	2	32				41	\$ 3,934
Public Meeting		4		4				8	\$ 756
<b>4.0 Resource Constraints and CE Documentation</b>									
Natural Resource ID		1		2	4		1	8	\$ 753
Historic / Archaeological Resources Reporting				2	2			4	\$ 375
Preparation of CE document		4		4	16		1	25	\$ 2,439
<b>PHASE B: Project Design</b>									
<b>5.0 Preliminary (60%) Plans</b>									
Prepare Preliminary Plans and Estimate		6	2	40				48	\$ 4,390
Utility Coordination and Relocation Routes		2		2				4	\$ 378
<b>6.0 ROW Plans</b>									
VTrans/Railroad ROW Coordination		4	2					6	\$ 713
Preparation of ROW Plans		4		16		2		22	\$ 1,961
<b>7.0 Final (85%) Plans</b>									
Final (85%) Plans	1	6		12				19	\$ 1,894
Special Provisions		2						2	\$ 205
Final Estimate		2		12				14	\$ 1,247
<b>8.0 Contract Plans, Const. Bidding, &amp; Award</b>									
Preparation of Contract Plans		4		8				12	\$ 1,104
Construction Bid Package		4		8			2	14	\$ 1,254
Bid Process		4					4	8	\$ 710
<b>9.0 Construction Services</b> (not included at this time)								-	\$ -
<b>TOTAL HOURS:</b>	2	58	6	160	22	30	8	286	
DIRECT HOURLY RATES:	\$ 82.43	\$ 35.34	\$ 52.43	\$ 30.00	\$ 34.71	\$ 28.00	\$ 26.00		
OVERHEAD:	\$ 134.47	\$ 57.65	\$ 85.53	\$ 48.94	\$ 56.62	\$ 45.68	\$ 42.41		
PROFIT (10%):	\$ 21.69	\$ 9.30	\$ 13.80	\$ 7.89	\$ 9.13	\$ 7.37	\$ 6.84		
<b>TOTAL LABOR COSTS :</b>	<b>\$ 477</b>	<b>\$ 5,933</b>	<b>\$ 911</b>	<b>\$ 13,893</b>	<b>\$ 2,210</b>	<b>\$ 2,432</b>	<b>\$ 602</b>		<b>\$ 26,457</b>

### VHB Direct Expenses

	Unit Cost	Unit	Quantity	Cost
Full Size Plotting - Working Drawings	\$0.30	SF	0	\$0
Half Size Printing - Working Drawings	\$0.08	EA	0	\$0
Color Plots (Meeting roll plans)	\$4.00	SF	4	\$16
Photocopying (Black & White)	\$0.08	EA	0	\$0
Photocopying (Color)	\$0.50	EA	0	\$0
Travel	\$0.59	Miles	300	\$177
Postage and Deliveries	\$50.00	Unit	0	\$0
Misc. expenses	\$100.00	Unit	1	\$100
<b>Total</b>				<b>\$293</b>

**TOTAL LABOR COSTS: \$ 26,457**

Direct Expenses (VHB): \$293

**TOTAL EXPENSES: \$ 293**

**PROJECT TOTAL: \$ 26,750**





**PART II STANDARD TERMS AND CONDITIONS.** The engagement of VHB by Client is under the following terms and conditions. These terms and conditions are an integral part of the collective Agreement between Client and VHB.

**SCOPE OF SERVICES.** VHB shall perform the services set forth in the attached Scope of Services. Requests for additional services and any associated fee adjustment must be authorized in writing before additional services can begin.

**PERFORMANCE STANDARDS.** VHB's services require decisions that are not based upon science, but rather upon judgmental considerations. In the performance or furnishing of professional services hereunder, VHB, and those it is responsible for, shall exercise the degree of skill and care ordinarily exercised by similarly practicing professionals performing similar services under similar conditions in the same locality ("Standard of Care"). VHB shall be entitled to rely on the accuracy and completeness of data, reports, surveys, requirements, and other information provided by Client.

**SCHEDULE.** VHB shall perform its services as set forth in the Scope of Services as expeditiously as consistent with the Standard of Care and the orderly progress of the Work. VHB shall not be responsible for failure to perform or for delays in the services arising out of factors beyond the reasonable control or without the fault or negligence of VHB.

**PAYMENT.** The fee estimate for the proposed Scope of Services is valid for 60 days from the date of Proposal. All schedules set forth in the attached Scope of Services commence upon receipt of a signed Agreement and, if requested, a retainer. Retainers will be applied to the last invoice. A RETAINER OF \$[ ] IS REQUIRED BEFORE SERVICES WILL COMMENCE.

Invoices will be rendered monthly and are due upon receipt. Any invoice unpaid more than 30 days after date of invoice will bear interest at 1-1/2 percent per month.

If Client fails to pay any invoice within 45 days of the date of invoice, VHB may, without waiving any other claim or right against Client or incurring any liability for delay, suspend the services until VHB has been paid in full. Sealed plans, final documents, reports, and attendance at meetings/hearings will not be provided unless payment for services is current.

If VHB is performing services for Client under multiple projects, payments must be current on all projects for services hereunder to continue. Client acknowledges VHB's right to suspend services and withhold plans and documents, as provided above, if any payments are overdue. If services are suspended for 30 days or longer, upon resuming services VHB shall be entitled to expenses incurred in the interruption and resumption of its services. If

services are suspended for 90 days or longer, VHB shall be entitled to expenses incurred in the interruption and resumption of its services and fees for remaining services shall be equitably adjusted.

The parties agree to coordinate invoices to assure timely payment. At minimum, VHB's project manager and Client's representative will confer as often as necessary about any issues involving invoicing and collections. Client's representative will contact VHB's project manager forthwith upon receipt of an invoice about any questions or issues concerning invoiced amounts. If Client's representative and VHB's project manager are unable to resolve any questions or issues, Client's representative will line item any disputed or questionable amount and pay VHB. VHB, at its option, may revise and resubmit disputed amounts at a later date.

Should it become necessary to utilize legal or other resources to collect any or all monies rightfully due for services rendered under this Agreement, VHB shall be entitled to full reimbursement of all such costs, including reasonable attorneys' fees, as part of this Agreement.

**OWNERSHIP OF WORK PRODUCT.** All work products (whether in hard or electronic form) prepared by VHB pursuant to the Agreement are instruments of service with respect to the Project and are not authorized, intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other Project. Any reuse by Client or a third person or entity authorized by Client without written verification or adaptation by VHB for the specific application will be at Client's sole risk and without liability or legal exposure to VHB. Client shall release, defend, indemnify and hold harmless VHB from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting therefrom. Any such verification or adaptation will entitle VHB to additional compensation at rates to be agreed upon by VHB and Client, third person, or entity seeking to reuse said documents.

Client recognizes that information recorded on or transmitted as electronic media, including CADD documents ("Electronic Documents") is 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 are not represented as suitable for any use or purpose.

VHB retains the copyright in all work products produced in connection with this Agreement, unless otherwise agreed to in writing by an authorized VHB representative. VHB licenses to Client on a non-exclusive basis the use of work products produced solely in connection with this Agreement. The license

may be revoked for any failure of Client to perform under this Agreement.

**CERTIFICATIONS.** VHB shall not be required to sign any documents, no matter by whom requested, that would result in VHB having to certify, guarantee or warrant the existence of conditions whose existence VHB cannot wholly ascertain. Any certification provided by VHB shall be so provided based on VHB's knowledge, information, and belief subject to the preceding sentence, and shall reflect no greater certainty than VHB's professional opinion developed through and consistent with the Standard of Care. VHB shall be compensated for any work necessary to assess project compliance with regulatory standards for purposes of such certification.

**INSURANCE.** VHB agrees to carry the following insurance during the term of this Agreement:

- Workmen's Compensation and Employer's Liability Insurance in compliance with statutory limits
- Comprehensive General Liability Insurance including Products Completed, Contractual, Property, and Personal Injury coverage with combined single limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate
- Professional Liability Insurance with a limit of \$1,000,000 per claim and in the aggregate
- Automobile Liability Insurance including non-owned and hired automobiles with a combined single limit of \$1,000,000 per occurrence

Certificates of insurance will be furnished upon request. If Client requires additional insurance coverage, and it is available, Client agrees to reimburse VHB for such additional expense.

**INDEMNITY.** Client and VHB shall at all times indemnify and save harmless each other, their officers, and employees on account of damages, losses, expenses, reasonable counsel fees, and compensation arising out of any claims for damages, personal injuries and/or property losses sustained by any person or entity, to the extent caused by the negligent acts, errors or omissions of the indemnifying party, its employees, or subcontractors in connection with the Project, and/or under this Agreement.

Client agrees to the fullest extent permitted by law, to indemnify and hold harmless VHB, its officers, employees and subconsultants from and against any and all claims, suits, demands, liabilities costs including reasonable attorneys' fees, and defense costs caused by, arising out of, or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products, or material that exist on, about, or adjacent to the job site.

**LIMITATION ON VHB'S RESPONSIBILITY AND JOBSITE**

**SAFETY.** VHB will not be responsible for the acts or omissions of

contractors or others at the Site, except for its own subcontractors and employees. Neither the professional activities of VHB nor the presence of VHB or its employees or subconsultants at a project site shall relieve the other parties on this project of their obligations, duties, and, including, but not limited to, construction means, methods, sequence, techniques, or procedures necessary for performing, superintending, and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. VHB and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. Client agrees that Contractor shall be solely responsible for job site safety and warrants that this intent shall be carried out in Client's contract with Contractor.

**ALLOCATION OF RISK.** In recognition of the relative risks and benefits of the Project to both Client and VHB, the risks have been allocated such that Client agrees that to the fullest extent permitted by law, VHB's total liability in the aggregate to Client and any persons or entities claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project and/or this Agreement from any cause or causes, including, but not limited to, VHB's negligence, errors, omissions, strict liability, statutory liability, indemnity obligation, breach of contract or breach of warranty shall not exceed the higher of \$50,000 (fifty thousand dollars), or ten (10) percent of the compensation actually paid to VHB. Client and VHB may agree to a higher limitation of liability for an increased fee.

**DISPUTE RESOLUTION.** All questions in dispute under this Agreement shall be submitted to non-binding mediation as a condition precedent to the institution of legal proceedings. 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 the notice. The parties shall then attempt to resolve the dispute within ten (10) days of meeting. Should the parties 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. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

**LEGAL SUPPORT.** To the extent VHB is required to respond to any dispute resolution process, including, but not limited to, requests for document production, discovery or a request to appear in any deposition or legal proceeding, which is related to the Scope of Services but does not arise out of VHB's negligent



acts, errors or omissions, Client shall compensate VHB for all costs incurred by VHB, including reasonable attorneys' fees.

**DESCRIPTIVE HEADINGS AND COUNTERPARTS.** The headings contained in this Agreement are for convenience of reference only and shall not constitute a part hereof, or define, limit or in any way affect the meaning of any of the terms or provisions hereof. This Agreement may be executed in two or more counterparts, and any party hereto may execute any such counterpart, which, when executed and delivered, shall be deemed to be an original and all of such counterparts taken together shall be deemed to be one and the same instrument.

**EXCLUSIVE REMEDIES.** In the event that any dispute is not remedied through the alternative dispute resolution procedures set forth herein, all claims, actions, and rights of action arising from or relating in any way to this Agreement or the services performed thereunder, whether in contract, tort, indemnity and all other rights of action whatsoever, shall be filed in a court of competent jurisdiction within three years of the completion of such services, or all such claims, actions and rights of action shall be waived. Recovery under this Agreement shall be limited by the parties' agreement on Allocation of Risk and the remainder of this section.

Notwithstanding any other provision of this Agreement, neither party shall be liable to the other for any liquidated, incidental, special, indirect or other consequential damages incurred, regardless of the nature of the cause or whether caused by Client or VHB, or their employees, subconsultants, or subcontractors. Consequential damages include, without limitation, loss of use, loss of profits, loss of production, or business interruption; however, the same may be caused.

VHB and Client waive all claims against each other arising out of or related to this Agreement or the services to the extent that losses, damages, and liabilities associated with such claims have been compensated by the proceeds of property insurance or any other insurance policy.

VHB makes no warranties or guarantees, express or implied, under this Agreement or any other contract document with respect to its provision of professional services. In entering into this Agreement, Client has relied only upon the representations set forth in this Agreement. No verbal warranties, representations, or statements shall be considered a part of this Agreement or a basis upon which Client relied in entering into this Agreement.

**NO THIRD PARTY BENEFICIARIES.** Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either Client or VHB. In addition, nothing herein shall be construed as creating a contractual relationship between Client and any VHB employee,

representative, or consultant. Client agrees that in the event of a dispute regarding this Agreement or the services rendered by VHB hereunder, Client shall only seek recourse against VHB and waives any right to pursue a claim against VHB's individual directors, officers or employees.

VHB's commitments as set forth in this Agreement are based on the expectation that all of the services described in this Agreement will be provided. In the event Client later elects to reduce VHB's Scope of Services, Client hereby agrees to release, hold harmless, defend, and indemnify VHB from any and all claims, damages, losses or costs associated with or arising out of such reduction in services.

**SEVERABILITY.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

**TAXES.** Any taxes or fees, enacted by local, state, or federal government and based on gross receipts or revenues, will be invoiced to and payable by Client as an additional amount due under this Agreement.

**PROJECT SPECIFIC PROVISIONS.** To the extent the Scope of Services involves any of the following services/geographies, the following general provisions apply accordingly:

**AMERICANS WITH DISABILITIES ACT (ADA).** Client understands and agrees that ADA standards are evolving and subject to varying, potentially contradictory interpretations and applications. VHB will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances, and regulations as they apply to the project. VHB cannot and does not warrant or guarantee that Client's Project will comply with all ADA requirements or ADA interpretations or other applicable regulatory interpretations.

**CLIMATE CHANGE/FLOOD ANALYSIS.** Consultant shall not be responsible or liable for any damages, losses, litigation, expenses, counsel fees and compensation arising out of any claims, damages, personal injuries and/or property losses related to flooding conditions whether directly or indirectly due to flood water damage, and Client shall at all times indemnify and hold harmless VHB, its respective officers, agents and employees on account of any related claims, damages, losses, expenses and counsel fees related thereto.

#### **CONSTRUCTION PHASE SERVICES**

**SITE VISITS.** VHB shall make periodic site visits upon the request of Client or as otherwise agreed in writing by Client and VHB for

the limited purpose of determining whether work is in general conformance with VHB's plans and specifications. Such visits are not intended to be an exhaustive check or a detailed inspection of Contractor's work. VHB shall not supervise or have control over Contractor's work nor have any responsibility for construction ways, means, methods, techniques, sequences, or procedures selected by Contractor nor for Contractor's safety precautions or programs in connection with the Work.

**SHOP DRAWINGS.** VHB's review and approval of submittals such as shop drawings, product data, samples, and other data, shall be for the limited purpose of checking for conformance with the design concept and the information in VHB's 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 Contractor and other unrelated parties. Review of a specific item shall not indicate that VHB has reviewed the entire assembly of which the item is a component. VHB shall not be responsible for any deviations from VHB's documents or other documents that are not brought to the attention of VHB in writing by Contractor. VHB shall not be required to review partial submissions or those for which submission of correlated items have not been received.

**GEOTECHNICAL SERVICES.** Client understands that VHB does not perform geotechnical services directly and, if requested, will retain a geotechnical subconsultant on behalf of Client, and VHB shall rely on the accuracy and completeness of data furnished as if the geotechnical services were contracted directly through Client.

**TANK INSPECTION.** Client will provide VHB with available underground storage tank (UST) documentation as necessary. VHB assumes that the documentation and site plans will be in order, be complete and meet regulatory compliance standards. VHB's inspection services are to fulfill regulatory requirements and do not include invasive testing or equipment calibration and testing. Accordingly, Client expressly agrees that VHB shall have no liability for equipment functioning or malfunctioning, product releases or spills.

**LSP SERVICES – PROJECTS LOCATED IN MASSACHUSETTS.** In accordance with the Massachusetts General Laws Chapter 21E, the performance of the services contained in this Agreement may require the engagement of a Licensed Site Professional (LSP) registered with the Commonwealth of Massachusetts under Massachusetts General Law Chapter 21A and the regulations promulgated by the Massachusetts Department of Environmental Protection (MADEP) thereunder (collectively the LSP Program). These laws and regulations place upon the LSP certain professional obligations owed to the public, including in some

instances a duty to disclose the existence of certain environmental contaminants to the MADEP. In the event that any site for which VHB has provided LSP services is audited by MADEP pursuant to the provisions of the Massachusetts Contingency Plan, VHB shall be entitled to additional compensation to provide such services as may be necessary to assist Client in its response to MADEP.

Client understands and acknowledges that in the event the LSP's obligations under the LSP Program conflict in any way with the terms and conditions of this Agreement or the wishes or intentions of Client, the LSP is bound by law to comply with the requirements of the LSP Program. Accordingly, Client recognizes that the LSP shall be immune for all civil liability resulting from any alleged and/or actual conflict with the LSP Program. Client also agrees to hold VHB and its LSP harmless for any claims, losses, damages, fines, or administrative, civil, or criminal penalties resulting from the LSP's fulfillment of its obligations under the LSP Program.

**PROJECTS LOCATED IN FLORIDA.  
FLORIDA STATUTES SECTION  
558.0035 (2013), AN INDIVIDUAL  
EMPLOYEE OR AGENT MAY NOT BE  
HELD INDIVIDUALLY LIABLE FOR  
ECONOMIC DAMAGES RESULTING  
FROM NEGLIGENCE OCCURRING  
WITHIN THE COURSE AND SCOPE  
OF THIS AGREEMENT.**