



**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN  
VANASSE HANGEN BRUSTLIN, INC.  
AND  
TOWN OF BUCKLAND, MA**

**Nilman Road over Clark Brook (Br. B-28-017)**

**VHB PROJECT NO. TBD**

**October 4, 2018**

This Agreement is composed of Parts I and II. Part I includes compensation, details of the services to be performed and timing of the services. Part II contains the General Terms and Conditions of Agreement, which are the general terms of the engagement between Town of Buckland, hereinafter called the "CLIENT," and Vanasse Hangen Brustlin, Inc., hereinafter called the "ENGINEER."

**PART I**

**COMPENSATION**

1. The compensation for performing the Scope of Services of this Agreement is listed below:

Task 1: Project Coordination*	\$ 3,200.00
Task 2: Field Survey & Base Plan (Sherman & Frydryk)	\$ 7,700.00
Task 3: Geotechnical Exploration & Recom. (GeoDesign)	\$ 12,500.00
Task 4: Hydraulic Analysis	\$ 19,100.00
Task 5: Preliminary Bridge Design	\$ 17,200.00
Task 6: Preliminary Roadway Design	\$ 11,800.00
Task 7: Preparation of Environmental Permit Applications	\$ 16,800.00
Task 8: Final Bridge Design	\$ N/A
Task 9: Final Roadway Design	\$ N/A
Task 10: Bidding Assistance	\$ N/A
<b>SUB-TOTAL</b>	<b>\$88,300.00</b>
<b>DIRECT COSTS (printing, travel, &amp; permit fees)</b>	<b><u>\$ 2,800.00</u></b>
	<b>\$ 91,000.00</b>

2. The Lump Sum Fee for services is **\$91,000.00**
3. The fee for services rendered will be invoiced monthly, and based on the percentage of completion.
4. The ENGINEER will not exceed the total cost as stated herein without the written approval of the CLIENT.



5. All direct costs (reimbursable expenses) for items such as printing, reproduction, supplies, photography, transportation, mail, faxes, deliveries, sustenance, telephone, and tolls will be invoiced to the CLIENT at cost. An initial upset limit for direct costs of **\$2,800** has been established.
6. All schedules set forth in Part I of this Agreement begin upon receipt of a signed Agreement.

## **PURPOSE**

The Town of Buckland has secured a grant from the Massachusetts Division of Ecological Restoration (DER) Stream through its Culvert Replacement Municipal Assistance Grant program to complete preliminary design and permit a replacement for the Nilman Road Bridge over Clark Brook (B-28-017). The goal of the grant program is to replace degraded or undersized culverts to meet improved environmental and flood resiliency criteria. The Nilman Road Bridge culvert is in poor condition and serves as the only access for five homes on a dead end road. VHB will utilize precast concrete elements where applicable to minimize the construction duration.

As required by Massachusetts General Law Chapter 85, Section 35, the design of all newly constructed bridges in excess of 10ft are to be reviewed by the Massachusetts Department of Transportation (MassDOT) for structural adequacy. VHB is prequalified by MassDOT to design structures of this length.

## **SCOPE OF SERVICES**

The bridge is expected to be a single span, prefabricated concrete three-sided structure, carrying two lanes of traffic. Final design of all precast bridge elements, including preparation of all required calculations, will be completed by the Fabricator. VHB will design the footings. Work shall be performed in accordance with the applicable sections of the current edition of the AASHTO LRFD Bridge Design Specifications and the MassDOT LRFD Bridge Design standards.

VHB will coordinate with the selected prefabricated bridge manufacturer (Fabricator) and coordinate with MassDOT. VHB will follow MassDOT's published Chapter 85 review process guidelines regarding Design Requirements for Full Bridge Replacement Projects.

## **SCHEDULE**

VHB will complete the items described in this scope of work within 8 months from written notice to proceed. This assumes a notice to proceed is received by October 31, 2018

## **TASKS**

VHB will complete the following tasks:

### **1.0 PROJECT COORDINATION**

- 1.1 Attend one (1) kick-off meeting with the Town and DER.
- 1.2 Attend up to two (2) meetings with the Town during design.

- 1.3 Coordinate the work of subconsultants and internal coordination
- 1.4 Provide firm Statement of Qualifications for submittal to DER

## **2.0 FIELD SURVEY & BASE PLAN PREPARATION**

- 2.1 Engage survey subconsultant, Sherman & Frydryk, to perform a site survey.
- 2.2 Conduct research of Town and County records to obtain existing property line and utility information.
- 2.3 Conduct field services to tie into existing property line information and to establish horizontal and vertical control within the proposed work area. This task assumes that control for this project will be based on NAD 1983 and NAVD 1988, established by GPS survey methods by MassDOT Survey Division unless another benchmark exists in the area.
- 2.4 Conduct field services to complete a topographic/detail survey of the project area described above. This task will also include wetland delineation to be placed by VHB. The work will also include 3 upstream cross sections, 3 downstream cross sections, 3 internal cross sections, and centerline profile of the brook 400 ft upstream and downstream of the culvert to meet DER grant scope requirements.
- 2.5 Conduct field services to conduct a bridge detail survey including accessible detail items such as abutments, backwalls, wingwalls, curb lines, fascia lines, ends of bridge, bottom of beams and guardrails. No survey on underwater or underground items are included.
- 2.6 Conduct office services to prepare a base plan of the site including the above information. The plan will be prepared at 20-scale with 1-foot contour intervals.
- 2.7 Deliver one electronic copy (DWG file) and a PDF version of the plan.
- 2.8 Review of field survey.

## **3.0 GEOTECHNICAL EXPLORATION AND RECOMMENDATIONS**

- 3.1 Engage a geotechnical subconsultant to perform soil borings and provide geotechnical recommendations.
  - 3.1.1 Boring Layout and Utility Location. GeoDesign will mark the boring locations in the field. GeoDesign will contact the utility clearance agency (Dig Safe Systems, Inc.) and the Town of Buckland to assist in locating underground utilities at the site. VHB will not assume responsibility for damage to unmarked or mismarked underground features.
  - 3.1.2 Street Opening Permit. GeoDesign's drilling subcontractor will obtain a street opening permit and street opening from the Town of Buckland.
  - 3.1.3 Soil Borings. GeoDesign will engage a drilling subcontractor to advance two (2) borings. The borings will be advanced to depths of up to 50 feet or refusal. 5-foot rock cores will be performed if refusal is encountered at depths less than 30 feet. The drillers will perform standard penetration tests (SPT) semi-continuously in the upper 15 feet and at standard 5-foot intervals thereafter.

GeoDesign will collect three stream bed samples (upstream, downstream and overbank) for grain size analysis.

At the end of drilling, the boreholes will be backfilled with the drill cuttings. Asphalt pavement will be restored with asphalt cold patch.

GeoDesign's drillers will implement a traffic management program consisting of road cones. We have not included in this proposal the cost of using a flashing arrow board or other traffic management devices.

GeoDesign anticipates that one (1) day will be required to complete the borings. If the subsurface conditions that contain obstructions, or if rock coring is needed in both borings, the drilling may extend into a second day. GeoDesign has included a separate line item for an additional day of drilling if needed.

- 3.1.4 Police Detail. GeoDesign has assumed that a police detail is not needed, and that if one is needed, it will be engaged and paid for by the Town of Buckland.
- 3.1.5 Geotechnical Field Engineer. GeoDesign will provide an experienced representative to coordinate the exploration program, observe the explorations, log the samples, and make adjustments to the exploration program as the subsurface conditions become evident.
- 3.1.6 Laboratory Testing. GeoDesign will test up to eleven washed sieve grain size analyses (four from each boring and three from the stream bed samples). Results will be used to confirm visual field classifications and evaluate soil index properties. It is assumed that soft cohesive/organic soils are not present and that strength and compressibility testing are not required.
- 3.1.7 Geotechnical Report. GeoDesign will prepare and submit a geotechnical report, including:
- Subsurface findings and soil laboratory testing results (including a boring location plan and typed boring logs);
  - Foundation type (assumed spread footings will be suitable), bearing strata, and design bearing pressure recommendations in accordance with AASHTO LRFD design methodology;
  - Lateral earth pressure recommendations;
  - Frictional resistance recommendations for base sliding evaluation;
  - Seismic site class and liquefaction potential;
  - Construction considerations;
- 3.1.8 Review Comments. GeoDesign will assist VHB in reviewing comments by MassDOT and prepare a final version of the geotechnical report as required based on comments/responses.
- 3.2 Coordinate with project Geotechnical Engineer regarding soil exploration plan, report, and recommendations.

#### 4.0 HYDROLOGIC AND HYDRAULIC ANALYSIS

VHB will conduct a hydrologic and hydraulic analysis to support the proposed Nilman Road culvert design of Clark Creek in Buckland, Massachusetts. Hydrologic analysis will consist of estimating flood flow discharges using the United States Geological Survey (USGS) regional regression equations. The hydraulic analysis will be completed using the United States Army Corps of Engineers Hydraulic Engineer Center Riverine Analysis System (HEC-RAS) version 5.0.5. The site is located within a Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) Special Flood Hazard Area (SFHA) Zone A as shown on the effective Flood Insurance Rate Map (FIRM) Panel 2501110010B dated May 15, 1980..

- 4.1 Prior to the start of the modeling, VHB will perform a site visit to measure bankfull stream geometries and document existing conditions. VHB will complete a pebble count of the stream bed material during the site visit.
- 4.2 For this analysis VHB develop the following model scenarios:
  - Existing Conditions Model – VHB will create an existing conditions HEC-RAS model using site specific survey of the stream bathymetry and existing culvert at the crossing location
  - Post-Project Model – The Pre-Project Model updated to represent proposed site conditions; VHB will analyze up to 3 different culvert alternatives.
- 4.3 VHB will provide recommendations on the culvert size and shape to meet the Massachusetts Stream Crossing Standards.
- 4.4 Based on the hydraulic model and the recommended culvert size and shape, VHB will calculate the maximum predicted scour depth at the stream crossing for the selected culvert type. We will calculate scour depths in accordance with the methodology presented in the Hydraulic Engineering Circular (HEC) 18 published by the Federal Highway Administration (FHWA) in April 2012. VHB will evaluate scour conditions for the following criteria:
  - Horizontal contraction scour
  - Vertical contraction scour (pressure flow condition)
- 4.5 Based on the final hydraulic model and scour calculations, VHB will make recommendations to size the natural stream bed material and scour counter measures at the proposed crossing.

VHB will prepare a hydraulic report in accordance with the MassDOT LRFD Manual. If the analysis supports a No-Rise condition

#### 5.0 PRELIMINARY BRIDGE DESIGN

- 5.1 Determine critical geometry, layout and elevations of proposed foundations, wingwalls, and prefabricated superstructure. It is anticipated that the proposed bridge will consist of cast-in-place concrete footings, and precast concrete wingwalls, headwalls, and three-sided superstructure.

- 5.2 Coordinate with potential Fabricators regarding product geometry, materials, and installation requirements.
- 5.3 Investigate two (2) alternatives for bridge replacement including: staged construction on existing alignment, full closure and accelerated construction on existing alignment.
- 5.4 Prepare preliminary plans, calculations, Special Provisions and cost estimate for submission to MassDOT.
- 5.5 Prepare a Field Data Collection Memo which summarizes the results of the field data collection and analysis. The memo will also summarize bridge alternatives considered and the recommended alternative.

## 6.0 PRELIMINARY ROADWAY DESIGN

- 6.1 Prepare graphic geometrics (horizontal and vertical) of roadway
- 6.2 Design typical roadway section
- 6.3 Define project limits, construction materials, and conceptual details
- 6.4 Identify impacts to wetlands and/or wetland buffer areas. Identify impacts to private property.

### Deliverables:

- Plan set including Title Sheet, Legend & General Notes, Typical Roadway Section, General Roadway Plan, Roadway Profile,
- Preliminary Construction Cost Estimate

## 7.0 PREPARATION OF ENVIRONMENTAL PERMIT APPLICATIONS

- 7.1 **Wetland Delineation:** The bridge spans Clark Brook, a perennial stream in Buckland. VHB Environmental Scientists will perform an initial desktop review of the Project Site, using available information such as GIS datalayers, aerial photographs, and any existing survey or Site plans. The Environmental Scientists will then assess the Project Site and surrounding area in the field, and will identify and delineate any regulated wetland resource areas subject to federal or state jurisdiction. VHB Environmental Scientists will delineate the resource area boundaries in the field in accordance with requirements of the Massachusetts Department of Environmental Protection (DEP) and the US Army Corps of Engineers (USACE), and will mark relevant resource area boundaries with numbered plastic flagging. This scope assumes that flag locations will be recorded in the field separately by a survey crew. While conducting the delineation, the Environmental Scientists will collect data to support the delineation, including representative photographs and field notes describing wetland and upland plant communities, soils, and hydrology in accordance with DEP criteria. The Environmental Scientists will compile the results of the field work into a summary wetland report, and if applicable will prepare DEP Wetland Delineation Forms to support the delineation.

**Deliverables:**

- Delineated wetland resources on Project Site, marked with plastic survey flagging
- Sketch of wetland delineation suitable for use by survey crew
- Wetland field documentation forms, if applicable
- Summary report

7.2 **Notice of Intent:** The Project will require work near or within regulated wetland resource areas subject to jurisdiction under the Massachusetts Wetlands Protection Act (WPA). The Town of Buckland does not have a wetlands protection bylaw. VHB Environmental Scientists will prepare and submit on the Client's behalf a Notice of Intent (NOI) to the Buckland Conservation Commissions (the Commission), with a copy to the DEP. The NOI will be prepared to comply with the provisions of the WPA. This scope assumes that all work to replace the culvert will involve only temporary impacts to wetland resource areas, and that the Project can be designed to comply with all relevant performance standards under the WPA Regulations.

VHB will prepare the following NOI documentation:

- The Notice of Intent Form (WPA Form 3);
- Site Description;
- Project Description;
- Mitigation Measures;
- Regulatory Compliance;
- Figures; and
- Abutters List.

A draft version of the NOI will be provided to the Client for review prior to submission to the Commission and the DEP. VHB will notify abutters to the Project, as required by the WPA. VHB Environmental Scientists will attend up to two public hearings held by the Commission to present and discuss the project. VHB will prepare colored boards of the Project plans and/or other infographics to use in presentations to the Commission. VHB will prepare responses to any Commission questions and/or requests for additional information following each hearing. A VHB Environmental Scientist will also perform a site walk with the Commission and/or its agent to view the Project Site and discuss any proposed mitigation activities.

**Deliverables:**

- One draft and one final Notice of Intent
- Abutter Notifications
- Colored boards and/or other materials suitable for presentation

7.3 **USACE Section 404 Permit:** The Project will require work within a Water of the US subject to jurisdiction under Section 404 of the US Clean Water Act (CWA), and will therefore require a permit from the USACE. This scope assumes that the project will have

temporary impacts only, affecting less than 5,000 square feet of federally regulate wetland resource areas, and will therefore qualify for a Self-Verification Notification (SVN) under General Permit (GP) 1 of the General Permits for Massachusetts. This scope assumes that no tree clearing will be required to construct the Project. VHB Environmental Scientists will prepare and submit an SVN filing to the USACE. The filing will include the SVN form, work description, and figures. A draft version of the SVN will be provided to the Client for review prior to submission.

**Deliverables:**

- One draft and one final SVN

**8.0 FINAL BRIDGE DESIGN**

No work under this agreement.

**9.0 FINAL ROADWAY DESIGN**

No work under this agreement.

**10.0 BIDDING ASSISTANCE**

No work under this agreement.

**ANTICIPATED DRAWING LIST**

Preliminary Structural Plans

1. Key Plan and Index of Sheets
2. General Notes
3. Boring Logs
4. Foundation Layout
5. General Plan and Elevation
6. Typical Section
7. Wingwall Sections and Details
8. Railing Details
9. Miscellaneous Details
10. Precast Guardrail Transition Base

Preliminary Roadway Plans

1. Title Sheet
2. Legend and General Notes



3. Typical Section and Pavement Notes
4. General Plan
5. Construction Details
6. Temporary Traffic Control Details

### **ASSUMPTIONS**

- The Town will coordinate with DER and perform all tasks listed under Task 1: Project Coordination of the scope provided to the Town by the DER dated August 2018.
- The existing bridge will be completely replaced.
- The new bridge will be located within the existing roadway right-of-way.
- The design of the bridge replacement shall consider accelerated construction techniques.
- MassDOT's Healthy Transportation Policy is not applicable.
- Preparation of a Design Exception Report is not required.
- Nilman Road roadway profile will not change.
- Roadway width will match the existing roadway width
- Geotechnical recommendations for the design and detailing of the bridge foundations and a hydraulic analysis of the proposed river crossing are required by MassDOT as part of their Ch.85 structural adequacy review.
- This scope assumes that the geotechnical report will recommend the bridge be founded on spread footing abutments. Additional VHB detailing and review services will be necessary should the use of deep foundations (piles, drilled shafts, etc.) be required.
- All structural calculations and shop drawings will be signed and sealed by the Fabricator or Fabricator's engineer, who shall be a registered professional engineer in the Commonwealth of Massachusetts.
- Design shall be in accordance with the current edition of the AASHTO LRFD Specifications for Highway Bridges and MassDOT LRFD Bridge Design Manual, 2013 Edition. The structures shall be designed for HL-93 live loading.
- It is assumed that VHB will be solely responsible for review and final approval of all fabricator shop drawings and design calculations. It should be noted, however, that MassDOT may request submission of said shop drawings and/or calculations to be reviewed by MassDOT prior to their issuance of final approval for Ch. 85 submission.
- Local NFIP coordinator will review the No-Rise Certification and a FEMA submittal will not be required.

**EXCLUSIONS**

The following services are not anticipated and are specifically not included in this Scope of Services at this time:

- Bridge Type Study and/or Bridge Sketch Plans
- Bridge structural design calculations
- Design of: wall/abutment drainage systems, support of excavation, cofferdams, control of water, or erection procedures.
- Final as-built drawings
- Investigation, identification testing, or analysis of hazardous waste.
- Design of public or private utilities.
- Post-construction certifications as the "Registered Design Professional".
- Design related to mitigation for impacts to resource areas
- Preparation of easement or right of way plans
- Preparation of a Stormwater Report
- Additional coordination with NHESP in the event of a "Take" finding
- Additional permitting, reporting, or public hearing requirements beyond those discussed in this scope
- Bidding services.
- Construction phase services will be determined after bidding the project and discussion with the town on the level of effort required to support the town for the project.

**APPROVED FOR  
VANASSE HANGEN BRUSTLIN, INC.  
(ENGINEER)**

By: Mark E. Rosen

Title: Managing Director, T&HD

Date: 10/5/18

**APPROVED FOR  
TOWN OF BUCKLAND  
(CLIENT)**

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

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

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

**AGREEMENT REVIEW**

Project Manager Initials: AMB

Reviewer Initials: PRW



**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.**

