

**VILLAGE OF TARRYTOWN
BOARD OF TRUSTEES
WORK SESSION 6:00 P.M.
WEDNESDAY, MARCH 16 2016
Tarrytown Village Hall
One Depot Plaza, Tarrytown, New York**

Board of Trustees Concerns

Open Session

1. Proposal – Peddling and Solicitation Law
2. Traffic Study
3. Local Landmark Designations
4. Amendment to the Vehicle Law

Executive Session

- 1A. Unlawful Harassment Policy
- 2A. Equal Employment Policy
- 3A. Historic Designation of Tarrytown Lakes
- 4A. Citibank Parking Lot Lease

AGREEMENT WITH RIVERTOWNS VILLAGE GREEN INC. – FARMERS MARKET

Trustee McGee moved, seconded by Trustee McGovern, and unanimously carried, that the following resolution be approved: Approved: 6-0

BE IT RESOLVED that the Board of Trustees of the Village of Tarrytown does hereby authorize and direct the Village Administrator to execute the operating plan of Rivertowns Village Green Inc. ("RVG"), for the operation of a farmers market in Patriots Park in 2016.

TRAFFIC STUDY CONTRACT

Trustee Hoyt moved, seconded by Trustee Butler, and unanimously carried, that the following resolution be approved: Approved: 6-0

BE IT RESOLVED that the Board of Trustees of the Village of Tarrytown does hereby authorize and direct the Village Administrator to execute a contract with Sam Schwartz Engineering to complete a traffic study associated with the Train Station/Waterfront Study.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING OF THE BOARD OF TRUSTEES HELD ON JANUARY 19, 2016

—

Trustee Basher moved, seconded by Trustee McGee, and unanimously carried, that the following resolution be approved: Approved: 6-0

BE IT RESOLVED that the Board of Trustees of the Village of Tarrytown does hereby approve the minutes of the regular meeting of the Board of Trustees held on January 19, 2016 as submitted by the Village Clerk.

APPROVAL OF AUDITED VOUCHERS

Trustee Basher moved, seconded by Trustee McGovern, and unanimously carried, that the following resolution be approved: Approved: 6-0

BE IT RESOLVED that the Board of Trustees of the Village of Tarrytown does hereby approve Abstract No. 14 of Audited Vouchers to be paid in the following amounts:

General	\$	293,709.00
Water		22,418.57
Sewer Fund		0.00
Capital		82,749.01
Library		6,346.99
Trust & Agency		<u>4,624.88</u>
Total	\$	409,848.45

The Board was polled all voting "aye" with the exception of Trustee McGee who recused herself from Voucher Numbers 2012253351 and 2012253364. Motion carried. 6-0

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD. SPEAKERS HAVE FIVE (5) MINUTES BEFORE YIELDING TO THE NEXT SPEAKER; THEN THREE (3) MINUTES FOR ADDITIONAL COMMENTS

Mark Lindberg, 15 Meadow Street, asked if there was an update on the parking situation on Meadow Street from Route 119 to Millbrook Road. Trustee Hoyt noted that he met with the Village Administrator and the Superintendent of Public Works at the site to develop a parking solution and asked the Village Administrator to provide an update. Administrator Blau noted that the legislation has been drafted and will be on the next Board of Trustees Work Session and if it is acceptable to the Board, it will be on the agenda at the next Board of Trustees meeting for approval. It will allow for parking on the paved area on the shoulder of Meadow Street.



Phone 914.467.6600
Fax 914.761.3759
www.vhb.com
Engineers | Scientists | Planners | Designers

50 Main Street
Suite 360
White Plains, NY 10606

Client Authorization

☒ New Contract

Date March 8, 2016

☐ Amendment No.

Project No. 81687.16

Project Name Preliminary Traffic Evaluation
Tarrytown Waterfront
Tarrytown, New York

		Cost Estimate	
		Amendment	Contract Total
To:	Mr. Michale Blau Village of Tarrytown Administrator One Depot Plaza Tarrytown, NY 10591	Labor	\$19,000*
		Expenses	
		TOTAL	\$19,000*

E-mail:

☒ Lump Sum ☐ Time & Expenses
☐ Cost + Fixed Fee ☐ Labor Multiplier

Phone No:

Estimated Date of Completion:

** Fee reduced to \$17,000 if Village conducts ATR counts, as detailed herein*

Scope of Services: VHB will provide traffic engineering services and attend 3 meetings in support of the evaluation of potential redevelopment options for certain properties in the vicinity of the Tarrytown train station and waterfront, as described in the attached proposal letter, dated March 7, 2016.

Prepared By: John Canning

Department Approval: *P. V. O'Leary*

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 dated

VHB Engineering, Surveying and Landscape Architecture, P.C.
Authorization

Client Authorization (Please sign original and return)

By _____

By _____

Print _____

Print _____

Title _____

Title _____

Date _____

Date _____



March 8, 2016

VIA ELECTRONIC MAIL

Mr. Michael Blau
Village of Tarrytown Administrator
Village Hall
1 Depot Plaza
Tarrytown, NY 10591

Re: Waterfront Traffic Evaluation
Tarrytown, CT

Dear Ms. Kaplan-Macey:

VHB Engineering, Surveying and Landscape Architecture, P.C. (VHB) is pleased to submit this proposal for Traffic Engineering services for the above-referenced project. We have developed the below scope of services based on conversations with you, and with engineering consultant, Ali Rabiee.

PROJECT UNDERSTANDING

The Village of Tarrytown is contemplating rezoning certain parcels on either side of the Metro-North Railroad in the vicinity of the train station to identify the highest and best use of these properties which would be in line with The Village's long-term goals. To this end, the Village requires a preliminary traffic evaluation to provide decision makers with a tangible sense of the potential traffic impacts that could accompany such changes.

VHB proposes to provide a preliminary traffic evaluation which will identify the potential increase in traffic in the context of current traffic activity, as detailed in the scope of services described hereafter.

SCOPE OF SERVICES

Task 1: Traffic Data Collection

To establish an existing baseline against which to compare future traffic volumes, VHB will conduct vehicle turning movement and classification counts (auto and heavy vehicles) at 15-minute intervals on a typical weekday during the morning (6:30 AM – 9:30 AM) and evening (4:00 PM – 7:00 PM) periods and on a typical Saturday during the midday period (12:00 PM – 3:00 PM) at the following intersections and as shown on the attached map:

1. Cortlandt Street/ Wildey Street
2. Cortlandt Street/ Main Street/ Depot Plaza
3. Depot Plaza/ Franklin Street/ White Street
4. Railroad Avenue/Division Street (top of H Bridge, east and west side intersections)

5. Broadway/ Wildey Street
6. Broadway/ Main Street
7. Broadway/Central Avenue
8. Broadway/Franklin Street

The count data will be reduced to identify the total volume of traffic passing through each intersection during each of the three (3) peak hours.

Automatic Traffic Recorders (**ATRs**) will be installed to continuously count vehicle traffic volumes for a 9-day period, encompassing five weekdays and two full weekends, at the following locations and as shown on the attached map:

- a) Main Street east of Cortlandt Street
- b) Wildey Street east of Cortlandt Street

The ATR data will be analyzed to determine peak hour activity and daily temporal distributions.

ATRs will be installed to continuously collect hourly entry and exit vehicular traffic volumes for an entire 4-day period, encompassing two weekdays and two weekend days, at the following locations that would no longer exist as part of the redevelopment options and which are shown on the attached map:

- McDonalds/Walgreens Plaza Shopping Center
- Village Hall and adjacent parking
- American Paper/OnTrack Sport Center;
- West Main Street Parking Lot; and
- The former Fire Training Center parking lot.

ATR driveway counts will be collected to understand the potential credit that could be applied as part of the redevelopment trip/ traffic calculations.

All count dates will be selected to avoid holidays and days when the weather would significantly affect traffic patterns.

Task 2: Trip Generation Estimates

The Village is evaluating several redevelopment options for publicly and privately owned properties in the study area. The traffic consultant will prepare trip generation estimates for the following scenarios outlined below. In addition, the traffic consultant will estimate trip generation for the GM/Edge site in Sleepy Hollow, based upon the adopted site plan for the site, which will be provided to the traffic consultant by the Village of Tarrytown.

1. Village Hall site
 - A. Mixed use development (residential, retail, office) with structured parking
 - B. Retail/office development with structured parking
 - C. Residential development with structured parking
 - D. Structured parking garage with ground floor retail
2. Waterfront
 - A. Waterfront park scenario
 - Parkland
 - Anchor cultural institution
 - Environmental education
 - Limited restaurant and retail
 - B. Waterfront neighborhood scenario
 - Residential development
 - Open space
 - Limited retail
 - C. Waterfront destination scenario
 - Residential above commercial
 - Retail
 - Office
 - Boutique hotel
 - Cultural institution
 - Recreation
 - Open space
3. American Paper site
 - Residential and/or live-work space above structured parking
 - Light industrial
4. Walgreens Plaza (Tarrytown Station Center)
 - Residential
 - Retail
 - Office
 - Structured parking

In total, trip generation estimates will be prepared for nine (9) redevelopment options under consideration for each of the three peak hours.

With the proximity to the Metro-North station, the proposed redevelopment options would be considered Transit Oriented Developments (TOD) and standard trip generation rates and industry accepted methodologies may not directly apply. The traffic consultant will review trip generation rates of similar developments in other similar local and national jurisdictions to develop the trip generation estimates for each option. This task assumes that detailed land use quantities will be provided to the traffic consultant for each redevelopment option.

The projected peak-hour trip-generation totals for each of the nine development options would be presented to the Client along with the existing total volume of traffic at the eight studied intersections. In consultation with the traffic consultant, the Client shall select one (1) development alternative and one (1) time period for more detailed evaluation, as described below (it is presumed, tentatively, that the Client would select the period and development scenario which, combined, would result in the greatest volume of traffic).

Task 3: Traffic Data Evaluation

The parcels subject to redevelopment will have the traffic at their driveways assigned to and then subtracted from the study area roadways based on the driveway counts **and the traffic consultant's knowledge of the local streets.**

For the one specific redevelopment scenario and the one peak hour selected for additional analysis, it would be assumed that the total number of existing commuter parking spaces will be maintained although reconfigured and relocated from surface parking to parking structures/as part of mixed-use buildings. The traffic consultant will reassign these trips to the study area roadways based on the driveway counts and the traffic consultant's knowledge of the local streets.

Similarly, for the one peak hour selected, trips from the one specific redevelopment scenario selected (as well as traffic from the Edge on Hudson development) will be assigned to the study area roadways based on the driveway counts and the traffic consultant's knowledge of the local streets.

For each of the studied intersections, the traffic consultant will prepare a graph and a table presenting the volume of traffic passing through the intersections, added to which would be the traffic generated by Edge on Hudson and the redevelopment scenario selected along with the trips redistributed from the relocated parking facilities, subtracted from which would be the traffic that would be eliminated by the termination of the uses on the parcels to be redeveloped. In this manner, the traffic consultant will be able to present the net increase in peak-hour traffic volumes at each intersection for the Client to consider.

Task 4 Traffic Study Report

VHB will prepare a short report, including supporting graphical and tabular presentations, documenting the study's findings, methodologies and recommendations.

The traffic consultant will prepare a brief technical memorandum which shall include the following:

- A description of the study methodology and findings;
- The existing peak-hour traffic volumes at the 8 studied intersections for all three peak periods studied;
- The temporal distribution of traffic volumes over the course of a week on Wildey Street and Main Street;
- The peak-hour volume of traffic projected to be generated by each of the 9 development scenarios for each of the three periods;
- The calculated cumulative existing and future traffic volumes for the one selected development scenario and the one selected time period for each of the 8 studied intersections

This task assumes one round of minor revisions based on consolidated comments from the Client.

Task 5 Meeting and Hearings

For purposes of this proposal we have allocated time under this task for preparation for and attendance at up to three (3) meetings (12 hours) with the Client. The first meeting would be to review the preliminary data and select a preferred development scenario and time period, the second to review the findings of the additional analyses, and the third to present the findings to the public.

The traffic consultant will perform Tasks 1 and 2 in three weeks from when the signed contract is received. Task 3 will be completed two weeks after the client selects the preferred alternative/peak hour.

FEE SCHEDULE

VHB will provide the services described in this agreement on a Fixed Fee. Our estimate of the fees associated with this work is as follows:

	<u>Estimated Fee</u>
1.0 Traffic Data Collection	\$6,000.00*
2.0 Trip Generation Estimates	\$4,750.00
3.0 Traffic Data Evaluation	\$4,750.00
4.0 Traffic Study Report	\$1,000.00
5.0 Meetings and Hearings (12 hours)	<u>\$2,500.00</u>
Total	\$19,000.00

*\$6,000 fee will be reduced to \$4,000 if the Village of Tarrytown conducts all ATR data collection included in Task 1.0, above.

The fee schedule above applies to the services required for the preparation of the traffic evaluation in accordance with published criteria and the scope outlined herein. The formal review process may require revisions to the document to reconcile comments and address requirements above and beyond published standards. Therefore, additional revisions to the document following submission will be provided on a time and materials basis in accordance with the attached rate schedule.

**ADDITIONAL MEETINGS AND HEARINGS**

The cost for project meetings, community meetings, preparation for and attendance at public hearings, etc. not specifically included in the scope described herein will be billed on a time and materials basis in accordance with the attached rate schedule.

SERVICES NOT INCLUDED

The scope of services described herein is based on our understanding of the project requirements and other available information. Any additional or extra services determined to be required during the course of the project will require authorization from the client in the form of an amendment to this agreement. Services which have not been included in the basic scope of services described herein may include:

- Parking Analyses
- Evaluation of intersection operating conditions or time periods other than those listed herein
- Accident analyses
- Sight distance analyses
- Environmental studies
- Evaluation of Alternatives
- Any and all services resulting from unforeseen conditions, changes in the Client's plans affecting VHB's tasks after any of those tasks are commenced

Any other services not explicitly included in the scope of work outlined herein are excluded from this proposal.

If you have any questions or require any further information, please do not hesitate to contact the undersigned. If these terms are acceptable, please execute and return one copy of the attached Client Authorization.

Thank you for considering the services of VHB Engineering, Surveying and Landscape Architecture, PC. We look forward to working with you on this project.

Sincerely,

VHB Engineering, Surveying and Landscape Architecture, P.C.

John Canning, PE
Director of Transportation



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 \$[\$0.00] 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.



VHB Engineering, Surveying and Landscape Architecture, P.C.
HOURLY BILLING RATES

Effective July 5, 2015

<u>BILLING CODE</u>	<u>LABOR CATEGORY</u>	<u>HOURLY RATE</u>
240	Principal 4	\$300
230	Principal 3	\$275
220	Principal 2	\$250
210	Principal 1	\$230
190	Technical/Professional 19	\$220
180	Technical/Professional 18	\$210
170	Technical/Professional 17	\$200
160	Technical/Professional 16	\$190
150	Technical/Professional 15	\$180
140	Technical/Professional 14	\$170
130	Technical/Professional 13	\$160
120	Technical/Professional 12	\$150
110	Technical/Professional 11	\$140
100	Technical/Professional 10	\$130
090	Technical/Professional 09	\$120
080	Technical/Professional 08	\$110
070	Technical/Professional 07	\$100
060	Technical/Professional 06	\$90
050	Technical/Professional 05	\$80
040	Technical/Professional 04	\$70
030	Technical/Professional 03	\$60
020	Technical/Professional 02	\$50
010	Technical/Professional 01	\$40
350	Technical/Support 5	\$80
340	Technical/Support 4	\$70
330	Technical/Support 3	\$60
320	Technical/Support 2	\$50
310	Technical/Support 1	\$40
500	Court Testimony Starts at	\$300

Reimbursable and sub-consultant expenses are billed at cost plus 10%.

