

TOWN OF CHARLOTTE, VT

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

with

DuBOIS & KING, INC.

For a

Bicycle and Pedestrian Scoping Study

THIS AGREEMENT is made this ____ day of August, 2016, by and between the Town of Charlotte, VT, hereinafter referred to as the TOWN, and DuBois & King, Inc., a Vermont corporation with its place of business at 28 North Main Street, Randolph, Vermont, 05060, hereinafter referred to as the CONSULTANT.

The TOWN wishes to employ the CONSULTANT for the purpose of providing Professional Engineering Services for a Bicycle and Pedestrian Scoping Study.

WHEREAS the CONSULTANT is ready, willing and able to perform the required services;

NOW THEREFORE, in consideration of these premises and the mutual covenants herein set forth, it is agreed by the parties hereto as follows:

1. SCOPE OF WORK

The CONSULTANT shall provide Professional Engineering Services to complete the Bicycle and Pedestrian Scoping Study as set forth in the Scope of Work (Attachment A); the Consultant's Cost Proposal (Attachment B); the State of Vermont's Standard State Provisions for Contracts and Grants (Attachment C); the State of Vermont's Standard State Provisions for Architect/Engineer Professional Service Agreements (Attachment D); all of which are incorporated herein and made a part of this Agreement.

2. BEGINNING OF WORK AND TERMINATION

This Agreement shall be effective August ____, 2016 and shall be completed on or before May 31, 2017.

3. THE AGREEMENT FEE

- A. General. The TOWN agrees to pay the CONSULTANT and the CONSULTANT agrees to accept as full compensation for the performance of all services and expenses encompassed under this Agreement, the cost to the CONSULTANT in accordance with the CONSULTANT'S Cost Proposal in Attachment B.

B. Maximum Limiting Amount. The total amount to be paid to the CONSULTANT shall not exceed Forty Nine Thousand Nine Hundred Eighty Four Dollars and No Cents (\$49,984.00), unless amended by the mutual agreement of the Town and the CONSULTANT.

4. PAYMENT PROCEDURES

Invoices shall be submitted to Dean Bloch, Town Administrator, Town of Charlotte, P. O. Box 119 Charlotte, VT 05445 at an interval not to exceed once per month. The TOWN agrees to pay the invoices within 30 days of receipt.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year above written.

DuBOIS & KING, INC.

By: _____
Jeffrey W. Tucker, P.E. LEED AP

Title: _____
President / CEO

TOWN OF CHARLOTTE

By: _____

Title: _____

Scope of Work

The following proposed scope of services is based on the VTrans Recommended Outline for a Bicycle and Pedestrian Scoping Study, but is customized to the specific needs of Charlotte for this study.

A. Project Kickoff Meeting

D&K will meet with the Town, plus any other individuals identified by the Town, to discuss the objectives, concerns, goals, schedule, and deliverables, and to solicit any existing relevant information such as tax maps, right of way and utility information, and other information that is available. Representatives from VTrans will be invited to attend the meeting. The public participation plan will be established at this meeting, as well as the schedule for future coordination meetings.

Deliverables: *Kickoff Meeting Minutes*

B. Compile Base Map/Document Existing Conditions

D&K will obtain Vermont Center for Geographic Information (VCGI), Chittenden County Regional Planning Commission (CCRPC) mapping, orthophotos, and tax maps and property owner information from the Town and/or the CCRPC. Additional information will be requested by the University of Vermont civil engineering class per the RFP. The information gathered will be compiled into base mapping that will be used throughout the project.

Once the base map is compiled, D&K will conduct a field investigation to photograph the corridors; take measurements of roadway and shoulder widths; and identify the presence of overhead and subsurface utilities, signing, drainage systems, adjacent topography and vegetation and other natural features. We will also discuss the presence/extent of underground utilities with the Town. Using a survey quality GPS unit, D&K's field naturalist will visit the entire project area and map all important and notable natural resources. This will provide a useful baseline for design, permitting, and eventual interpretive sites. Cultural and historic resources will be identified by Hartgen Archaeological Associates, and will also be shown on the base mapping. D&K will collect traffic volume information, pedestrian and bicycle counts (if available), and crash history information, and use this information in the development of alternatives.

Deliverables: *Base map digitally and hard copy*

C. Local Concerns Meeting

D&K will coordinate and facilitate a Local Concerns Meeting to discuss any project issues with affected property owners, local officials, VTrans, the CCRPC, regulatory officials, the general public, and other appropriate parties. Issues identified at this meeting will be taken into consideration during the preparation of the Purpose and Need Statement and throughout the development of the project. D&K will conduct the meeting, explain the project development process, summarize previously identified issues and concerns, and solicit input relevant to this project. Central to the discussion will be what different user groups are anticipated and desires on the trail and what route and surface types are desired and what improvements to the current conditions might entail. D&K will take detailed notes of the meeting and prepare meeting minutes.

Following the Local Concerns Meeting, DuBois & King will prepare a Purpose and Need Statement for the project. This statement will clearly define the reasoning and justification for the project, as it will be used as the basis for all proposed alternatives. The statement will be submitted to the Town and VTrans for review and comment.

Deliverables: *Local Concerns Meeting Minutes and Purpose and Needs Statement*

D. Identify Land Use Context

DuBois & King will identify and review existing land use patterns and the need for connectivity between destinations throughout the project area. This task will include mapping of current and potential future land uses and recreational facilities throughout the study area, which will be used to understand current and future pedestrian and cyclist travel patterns. The context evaluation will be used to identify needs for bicycle and pedestrian facilities, and will be used during the design and evaluation of the alternatives.

Deliverables: *Land Use Map and Site Analysis Map, both digitally and hard copy*

E. Develop Conceptual Alternatives

D&K will work with the Town to identify potential alternatives to address the project goals based on information compiled for the base plan, site analysis and from the local concerns meetings. The alternatives will address current and future needs of pedestrians and bicyclists and identify potential opportunities to implement trail amenities, including whether the trail is on or off road, and the transitions in between varying treatments. Because of the project's location through possible State of Vermont rights-of-way, we also propose to coordinate a meeting with the appropriate VTrans and FHWA officials to discuss possible options, easements and permitting and assure that the team has their input and understands the constraints.

The alternatives will be shown graphically in plan view on the base mapping and will include typical sections and renderings, as appropriate. Alternatives will include a variety of options to meet the non-motorized transportation needs for the project area, as well as to enhance this corridor's connections to the surrounding aesthetics.

Each alternative will be developed to meet the requirements of the Americans with Disabilities Act (ADA) and other applicable state and federal requirements. Alternatives having an impact on stormwater will consider any on-site amendments or facilities such as green stormwater infrastructure. For a trail, this may be a vegetated swale along both sides of the trail, green buffers or researching permeable options for pavement.

Deliverables: *Alternatives in both plan and section view, as well as renderings for public delivery*

F. Identify Right of Way Issues

Existing right of way and easement information will be compiled from VTrans and Town records and added to the base map. We will confirm the width and extent of existing roadway rights of way, public/private property ownership boundaries, and recorded easements and restrictions (such as Act 250 permits) that exist within the project limits. While this information will not precisely determine property limits, it will allow the team to identify potential impacts to private properties outside of the public rights of way and to consider these impacts in the feasibility assessment. Additionally, access management issues will be identified and recommendations made regarding side roads and driveways that may pose potential safety considerations for pedestrians.

Deliverables: *ROW information will be added to base maps*

G. Identify Utility Conflicts

During the development of base project information, we will identify the presence, extent, and ownership of overhead and underground utilities through a review of Town records and field observations. Although exact locations will not be determined, we will identify obvious and potential conflicts with these utilities through the development of alternatives.

For each alternative, D&K will identify which utilities may be affected, conflicts, and probable relocations that may be necessary. If relocations are envisioned, we will identify where probable relocations would occur and identify if these locations are within or outside of the existing right of way. D&K will also identify whether any

underground utilities might be impacted by the construction of proposed improvements. The assessment will also include identification of owners of potentially impacted utilities.

Deliverables: Utilities information will be added to base maps

H. Identify Natural and Cultural Resource Constraints and Permitting Requirements

D&K's work under this task will also include the identification of permits that may potentially be needed for this project. These may include:

- Amendments to existing Act 250 permits
- USACOE General Permit for wetlands
- Operational Permit for stormwater
- Conditional Use Determination for wetlands
- Construction General Permit for stormwater
- Stream Alteration Permit

DuBois & King has permitting specialists on staff that regularly work on transportation projects. We know the resource agency staff members and are knowledgeable of current regulations and practices. We have the experience to identify potential permitting requirements early in the project development process. Where possible, D&K will obtain documentation from state or federal agencies should any resources be impacted.

Charlotte Brodie is a field naturalist specializing in wetlands analysis and will be conducting the natural resources inventory which will also be added to the base map. Once alternatives are developed, D&K will estimate the area of disturbance that would result and include the extent of mitigation required under the National Pollutant Discharge Elimination System permit. Further, D&K will align project goals to those found in the known regional plans such as the stormwater master plan, tactical basin plan, stormwater retrofits and other stormwater discharge impacts by each alternative.

Cultural and historic resources will be evaluated by our subconsultant, Hartgen Archeological Associates (Hartgen). Archaeological and historical assessments will entail three primary phases including: background research, site visits, and preparation of a report for submittal to VTrans.

Background research will be conducted to place the project area in its historic and pre-contact contexts. Archaeological background research will include available information from State and National archives and databases.

Walkovers of the project area will be conducted by an archaeologist and an architectural historian who will take photographs characterizing the setting and historic context. The archaeologist will assess the potential for the presence of archeological sensitivity or intact cultural deposits. The architectural historian will review the area for historic features. Recommendations for avoiding impacts and adverse effects will be documented in a letter report.

Hartgen will also review project plans to determine the effect of the project on the historic and archeological resources, and make recommendations concerning proposed plans to ensure that the project does not adversely affect historic or archeological resources. Draft Archaeological Resource Assessment and Historic Review Reports will be provided to the Town and VTrans for review and comment. Based on the results of the research and archeological site visit, recommendations will be made as to whether archeological testing may be necessary for permitting.

Deliverables: Archeological Resource and Historic Preservation Assessment Report and any documentation from state agencies to summarize resource impact in the area. Maps of the Natural Resources Inventory.

I. Alternatives Presentation

Upon compilation of the base information and development/review of potential alternatives, D&K will coordinate and schedule a public meeting to present and obtain input on the alternatives. Appropriate parties will be invited, including the general public, affected property owners, local officials, VTrans and CCRPC. D&K staff will conduct the meeting/present the alternatives for pedestrian facilities, bicycle facilities, lighting, signage and other trail enhancements. We will provide a workshop environment, allowing all participants to engage and provide their input through commenting on the plans. We will work to build a consensus for a preferred alternative, which may be one of the alternatives presented or a hybrid including elements of several alternatives and the mandatory no-build alternative.

Deliverables: Meeting Minutes from Presentation, including feedback and consensus for preferred alternative.

J. Develop Preliminary Cost Estimates

Construction cost estimates will be prepared for the recommended alternatives using VTrans' methodology, which utilizes an individual pay item and unit price basis. Project pay items and descriptions will be identified based on the anticipated construction. Quantities will be computed for each item using the conceptual alignment alternatives. Unit prices will be obtained from the most current edition of the VTrans Unit Price for preliminary engineering estimates. In addition to construction costs, the estimates will include costs for municipal project management, engineering, construction inspection, utility relocations, and right of way or property acquisition and any further planning and design to be undertaken towards implementation.

Deliverables: Cost estimate to include amounts for construction, engineering, municipal project management and construction inspection.

K. Implementation Timeline and Funding Strategy

D&K will work with the Town to provide a detailed and practical implementation plan for the project. The plan will likely consist of a number of discrete projects that may unfold over a number of years, potentially with a variety of funding sources, including VTrans MAB programs. A realistic timeline will be developed, taking advantage of D&K's significant experience with all phases of the planning, design, and construction of projects and knowledge of funding opportunities. The implementation strategy will include a prioritization of the plan's elements and will be developed with input from the public and Town officials.

Deliverables: Project Implementation Timeline and Funding Matrix.

L. Report Production and Presentation to the Selectboard

DuBois & King will compile the results of the above tasks and prepare a draft report that will follow VTrans' Recommended Outline for a Bicycle and Pedestrian Scoping Study. An outline of the report is expected to include:

- Executive Summary
- Introduction
- Project Purpose and Need
- Existing Conditions
- Right of Way
- Utility Impacts
- Natural and Cultural Resources
- Identified Alternatives (description, function, relation to purpose and need)
- Conceptual Plans

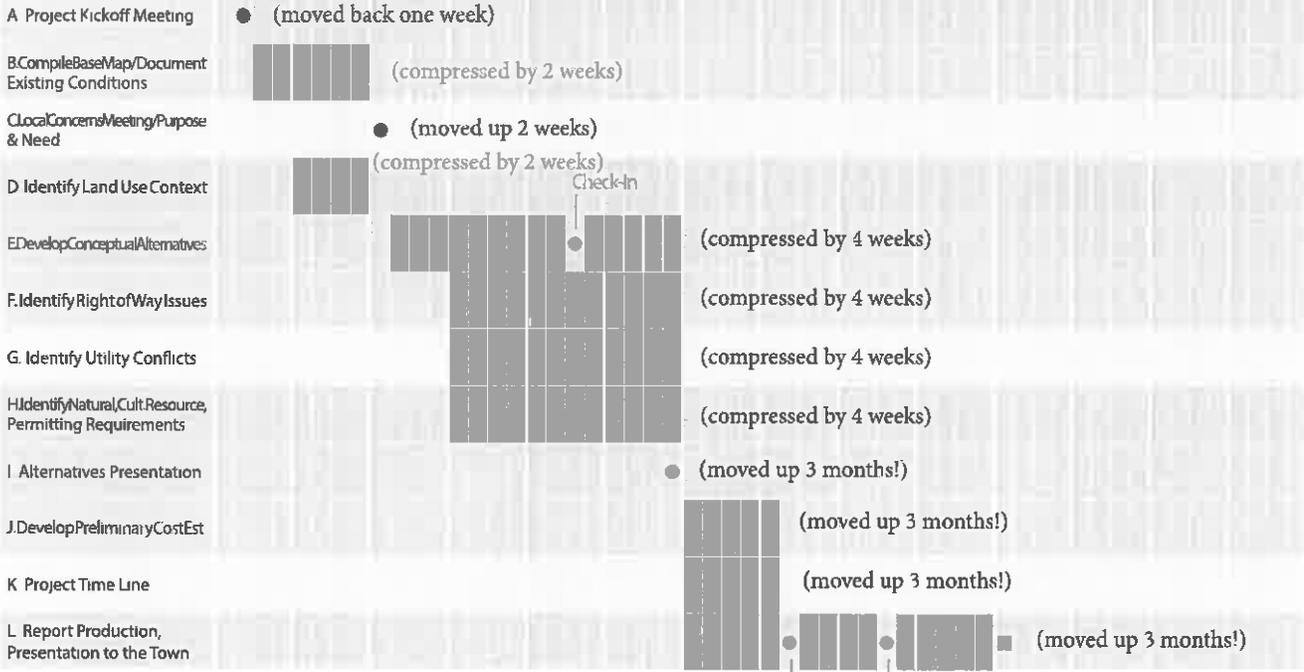
Preliminary Project Cost Estimates
Public Involvement
Compatibility with Planning Efforts
Project Timeline
Summary and Recommendations
Appendices (sketches, cost estimates, environmental data)

DuBois & King will submit three (3) hard copies and electronic copies (.pdf) of the draft version of the report to the Town and the VTrans project supervisor for review and comment with three weeks to review the draft prior to the public meeting. We will conduct a final Public Information Meeting to present and discuss the conclusions once the draft report is submitted and approved. Upon receipt of all review comments, D&K will address the comments, implement appropriate changes, and prepare the final report. D&K will submit three (3) hard copies and electronic copies of the final report to the Town and VTrans.

Deliverables: Draft Report, Public Information Meeting Minutes, Final Report.

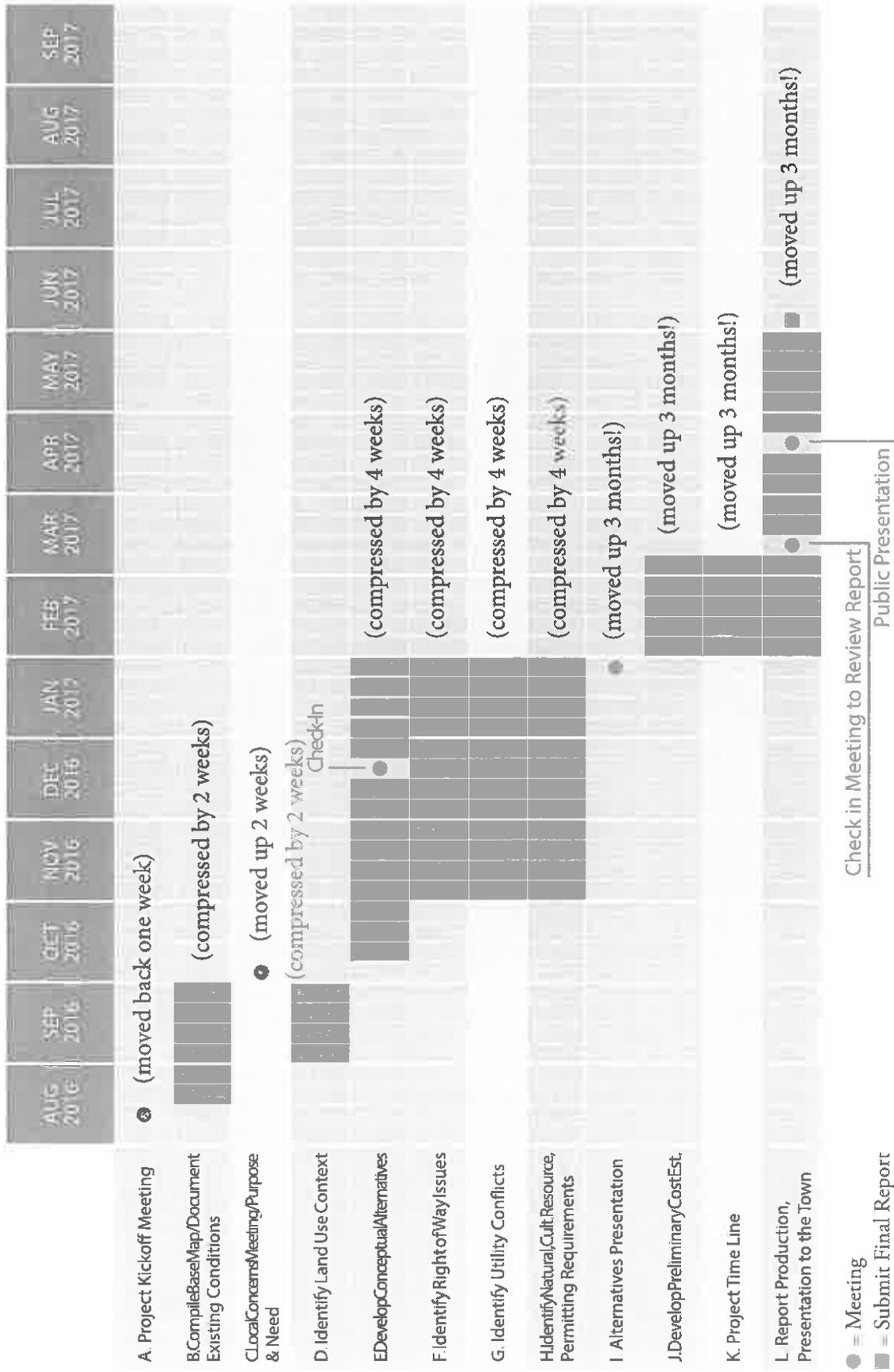
M. Project Wrap-Up

All data, databases, reports, program and materials in digital and hard copy format created under this project shall be transferred to the Town of Charlotte upon project completion and become the joint property of both the Town of Charlotte and the State of Vermont.



- = Meeting
- = Submit Final Report

Check in Meeting to Review Report
Public Presentation



Cost Proposal: Town of Charlotte
Town of Charlotte Bicycle and Pedestrian Scoping Study
 Project No.: 629516X



Project Phases & Tasks	Labor Categories											Total Hours
	Project Manager	Landscape Planner	Transp'n Engineer	Design Technician	Environ'tl Engineer	Field Naturalist	QA/QC	Structural Engineer	Admin Support			
A. Project Kick Off Meeting	4	4							2			10
B. Compile Base Map/Document Existing Conditions	4	32	4	24	8	24						96
C. Local Concerns Meeting & Purpose and Need Statement	6	16							2			24
D. Identify Land Use Context	2	16	2									20
E. Develop Conceptual Alternatives	12	32	16			8	2	8				78
F. Identify Right of Way Issues	4	12	8									24
G. Identify Utility Conflicts	2	4	8									14
H. Identify Resource Constraints and Permitting Issues	2	4	4		16	8						30
I. Alternatives Presentation	12	30	4				2		2			50
J. Preliminary Cost Estimates	4	12	6				2	4				28
K. Project Timeline and Implementation Plan	2	8										10
L. Prepare Draft, Final Report and Presentation	24	32	16		2		4	2	8			88
Total Hours:	78	202	64	24	26	40	30	14	14	14	14	472

Cost Proposal: Town of Charlotte

Town of Charlotte Bicycle and Pedestrian Scoping Study

Project No.: 623516X



Project Phases & Tasks	Labor Categories										Total Hours	
	Project Manager	Landscape Planner	Transp'n Engineer	Design Technician	Environ'l Engineer	Field Naturalist	QA/QC	Structural Engineer	Admin Support			
Direct Labor	78	202	64	24	26	40	10	14	14		472	
Total Hours		\$28.70	\$29.50	\$24.50	\$44.00	\$30.50	\$54.00	\$40.00	\$15.50			
Direct Labor Rates:	\$44.00	\$5,797	\$1,888	\$588	\$1,144	\$1,220	\$540	\$560	\$217		\$15,386	
Direct Labor Cost:	\$3,432											
Direct Expenses												
Subsistence	Miles @ \$0.540 / Mile = 840 Miles = \$ 454										Subsistence Total = \$ 454	
Support Expenses	Telephone/Postage = \$ 30											
	Reproduction = \$ 150											
	Copying = \$ 20											
	Support Total = \$ 200											
Miscellaneous Expenses	Hartgen Archaeological Associates = \$ 4,700										Miscellaneous Total = \$ 4,700	
	Total Direct Expenses = \$ 5,354											
Cost Summary												
Direct Labor Cost	\$ 15,386	Total Labor Cost										\$ 40,573
General & Administrative Cost	\$ 25,187	Fixed Fee										\$ 4,057
Total Labor Cost	\$ 40,573	Direct Expenses										\$ 5,354
		Total Price										\$ 49,984

ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

1. **Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed

herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

10. **Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in

the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

11. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
12. **Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
13. **Taxes Due to the State:**
 - a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
 - d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
14. **Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:
 - a. is not under any obligation to pay child support; or
 - b. is under such an obligation and is in good standing with respect to that obligation; or
 - c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. **Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
16. **No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
17. **Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
18. **Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>
19. **Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
20. **Internal Controls:** In the case that this Agreement is an award that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
21. **Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.
22. **Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section X and Bulletin 3.5 Section IV.B.

(End of Standard Provisions)

ATTACHMENT D

STANDARD STATE PROVISIONS FOR

ARCHITECT/ENGINEER PROFESSIONAL SERVICE AGREEMENTS

Attachment C, Paragraph 6 is deleted in its entirety and replaced with the following:

6. Independence, Liability, Indemnity:

- A. The Party will act in an independent capacity and not as officers or employees of the State.
- B. This Agreement requires the Party to provide professional services in the design and/or engineering of all or a part of the Project to which this Agreement relates. This is not an Agreement for construction services. However, construction administration, observation or certification services may be required on the part of the Party if this Agreement so provides. Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for all services performed under this Agreement, with minimum coverage as required by the Agency of Administration but not less than \$1,000,000 per claim and \$2,000,000 policy aggregate.
- C. The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in providing "non-professional services" under this Agreement. As used herein, "non-professional services" means services provided under this Agreement other than professional services relating to the design and/or engineering of all or part of the project. The State shall notify the Party in the event of any such claim or suit covered by this Subsection C, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit arising out of "non-professional services" provided under this Agreement.
- D. Notwithstanding anything to the contrary set forth in Subsection C above, the Party shall not be obligated to defend the State and its officers and employees against claims or suits arising from the Party's provision of engineering design services or architectural design services. However, the Party's obligation to defend the State and its officers and employees against all claims or suits arising out of "non-professional services" provided under this Agreement as provided in Subsection C above and the Party's other obligations under Attachment C shall remain in effect.
- E. The Party agrees to indemnify and hold the State, its officers and employees, harmless from and against monetary damages to third parties, together with reasonable costs, expenses and attorney's fees incurred and paid by the State in defending claims by third parties (collectively "Damages") but only in the event and to the extent such Damages are incurred and paid by the State as the proximate cause of negligent acts, errors or omissions ("Professional Negligence") by the Party, its employees, agents, consultants and subcontractors, in providing the professional services required under this Agreement.

F. As used herein, "Professional Negligence" or "negligent acts, errors or omissions" means a failure by the Party to exercise that degree of skill and care ordinarily possessed by a reasonably prudent design professional practicing in the same or similar locality providing such services under like or similar conditions and circumstances.

G. The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party arising from the provision of "non-professional services" (as defined herein) under this Agreement.

H. The Party shall not be obligated to indemnify the State for any Damages incurred by the State attributable to the State's own negligent acts, errors or omissions or the negligent acts, errors or omissions of its officers, agents or employees, or the acts, errors, omissions or breach of Agreement by persons or entities other than the Party, its employees, agents, consultants and subcontractors.

I. After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.