

TOWN OF NEWCASTLE
WARRANT FOR SPECIAL TOWN MEETING

Monday, August 7, 2023

To R. Benjamin Frey, a resident for the Town of Newcastle, in the County of Lincoln, State of Maine,

GREETING:

In the name of the State of Maine, you are hereby required to notify and warn the inhabitants of the Town of Newcastle in said County and State, qualified by law to vote in town affairs, to meet at the Fire Station building at 86 River Rd on Monday, the 7th day of August, A.D. 2023 at 7:00 pm, then and there to act upon Article 1 by written ballot and Articles 2-3 to be voted on in an open Town Meeting.

ARTICLE 1: To elect a moderator by written ballot to preside at said meeting.

ARTICLE 2: Shall the Town authorize a transfer of \$186,741.60 from its undesignated fund balance to the contingency account to cover overages related to the 'May Day' Storm?

ARTICLE 3: Shall the Town authorize a transfer of \$13,258.40 from its undesignated fund balance to the contingency account to cover potential expenses related to PFAs remediation?

Given under our hands at Newcastle, Maine this 24th day of July 2023.



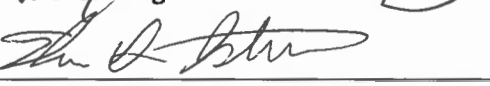
Karen Paz, Chair



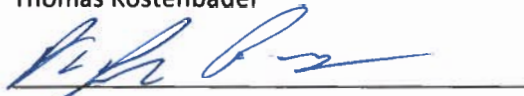
Joel Lind



Tom Glendinning

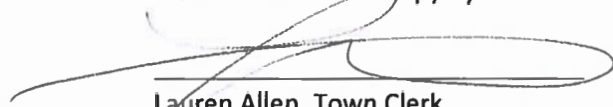


Thomas Kostenbader



Rufus Percy

A true and attested copy by:



Lauren Allen, Town Clerk



Town of Newcastle

Kevin L. Sutherland Interim Town Manager

4 Pump Street
PO Box 386
Newcastle, ME 04553
Tel. (207) 563-3441
Fax. (207) 563-6995

FROM: Kevin L. Sutherland, Interim Town Manager
TO: Newcastle Residents
CC: Select Board
DATE: July 31, 2023
RE: 8/7/2023 Special Town Meeting

The Select Board has called for a special town meeting specifically to address the movement of some funds from the unassigned fund balance into this fiscal year to address two items that had not been budgeted for:

Article 2. Expenses remaining from the cleanup of the severe storm that occurred on May 1, 2023.

Hagar Enterprises	\$ 111,688.60	
VHB Engineering	\$ 92,053.00	
	\$ (17,000.00)	encumbered tech funds from FY22
Total	\$ 186,741.60	

See attached invoices for details.

Article 3. Recent developments in Newcastle per state mandate around per- and polyfluoroalkyl substances aka PFAS or “Forever Chemicals” now require well water testing around sludge sites. The closed landfill in Newcastle has been used in the past for the spreading of sludge. Recent testing by state officials has already identified a few properties that have levels of PFAS which will require state mandated remediation. While most of these expenses will be covered by the state (90%) – at least initially – the town of Newcastle will still be responsible for 10% of the cost.

Based on conversations with the State’s Department of Environmental Protection, the cost to remediate via a treatment system varies by location. Something that can be installed inside a home will cost around \$6,000. Something that cannot be installed in the home will need its own shed or shelter and is estimated around \$12,000. Three sites have currently been identified, one in the home, two outside (town share estimated at \$3,000). However, all the testing in the potentially affected area has not yet been conducted. Therefore, this request is to move **\$13,258.40** from unassigned fund balance into contingency to address this matter over the course of the fiscal year.

Note: The sum of article 2 and 3 totals \$200,000.



Invoice

Hagar Enterprises, Inc
 54 Biscay Road
 Damariscotta, ME 04543
 Phone: (207) 563-8588
 Fax: (207) 563-8468

Invoice Number	6807
Invoice Date	5/31/2023

www.hagarenterprises.com

Bill To: Town of Newcastle
 4 Pump Street
 P.O. Box 386
 Newcastle, ME 04553

Re: Storm Clean Up 05.15-05.31

HEI Job No	HEI Job Description	Customer Job No	Payment Terms	Due Date
GS-106	Newcastle General Services		Due Upon Receipt	5/31/2023
Description		Quantity	Rate	Amount
5/31/2023	C.A. Newcomb and Sons - Guardrail Repair Lynch Road Storm Damage	1.00	1,080.00	1,080.00
	EXCAVATOR - TB153 TAKEUCHI	50.00	115.00	5,750.00
	EXCAVATOR - PC238	80.00	145.00	11,600.00
	Labor	425.00	65.00	27,625.00
	18 ADS N12 Pipe Soil Tite	100.00	65.00	6,500.00
	Paving by Hand	20.00	225.00	4,500.00
	Chipper	1.00	717.60	717.60
	Concrete	8.00	250.00	2,000.00
	Trucking	40.00	90.00	3,600.00
	3/4" Crushed Gravel	5.00	23.00	115.00
	Fabric	1.00	350.00	350.00
	Message Board	2.00	2,000.00	4,000.00
	Hydroseed	1.00	1,500.00	1,500.00
	Mobilization	3.00	450.00	1,350.00
	Trucking for chipper	16.00	65.00	1,040.00
	Fill	24.00	9.00	216.00
	Tack	1.00	50.00	50.00

Subtotal \$ 71,993.60
 Sales Tax (if applicable) \$ 0.00

Total Due \$ 71,993.60

Thank you for your business!

Hagar Enterprises, Inc
 54 Biscay Road
 Damariscotta, ME 04543
 Phone: (207) 563-8588
 Fax: (207) 563-8468



Invoice

Invoice Number	6679
Invoice Date	5/15/2023

www.hagarenterprises.com

Bill To: Town of Newcastle
 4 Pump Street
 P.O. Box 386
 Newcastle, ME 04553

Re: N. Newcastle Road Storm Damage

HEI Job No	HEI Job Description	Customer Job No	Payment Terms	Due Date
GS-106	Newcastle General Services		Due Upon Receipt	5/15/2023
	Description	Quantity	Rate	Amount
5/5/2023	EXCAVATOR - TB153 TAKEUCHI	6.00	115.00	690.00
5/5/2023	Mobilization	1.00	350.00	350.00
5/5/2023	Labor	12.00	65.00	780.00
5/5/2023	Large Size 6-8" RipRap Stone	1.00	30.00	30.00
5/5/2023	1 1/2" Crushed Gravel	12.00	22.00	264.00
	North Newcastle Road Storm Damage and washout repair			

Subtotal \$ 2,114.00
 Sales Tax (if applicable) \$ 0.00

Total Due \$ 2,114.00

Thank you for your business!

Hagar Enterprises, Inc
 54 Biscay Road
 Damariscotta, ME 04543
 Phone: (207) 563-8588
 Fax: (207) 563-8468



Invoice

Invoice Number	6682
Invoice Date	5/15/2023

www.hagarenterprises.com

Bill To: Town of Newcastle
 4 Pump Street
 P.O. Box 386
 Newcastle, ME 04553

Re: Storm Clean Up 05.05.23

HEI Job No	HEI Job Description	Customer Job No	Payment Terms	Due Date
GS-106	Newcastle General Services		Due Upon Receipt	5/15/2023
Description		Quantity	Rate	Amount
5/5/2023	EXCAVATOR - TB153 TAKEUCHI	16.00	115.00	1,840.00
5/5/2023	Trucking	32.00	90.00	2,880.00
5/5/2023	Pavement	15.00	225.00	3,375.00
5/5/2023	Asphalt Cutting	1.00	250.00	250.00
5/5/2023	1 1/2" Crushed Gravel	24.00	19.00	456.00
5/5/2023	Hay	12.00	9.00	108.00
5/5/2023	Grass Seed	1.00	125.00	125.00
5/5/2023	Hay Blower	1.00	400.00	400.00
5/5/2023	Mobilization	1.00	350.00	350.00
5/5/2023	TackCoat	1.00	50.00	50.00
	Lewis Hill Road			
	Storm damage work			

Subtotal \$ 9,834.00
 Sales Tax (if applicable) \$ 0.00

Total Due \$ 9,834.00

Thank you for your business!

Hagar Enterprises, Inc
 54 Biscay Road
 Damariscotta, ME 04543
Phone: (207) 563-8588
Fax: (207) 563-8468



Invoice

Invoice Number
6683
Invoice Date
5/15/2023

www.hagarenterprises.com

Bill To: Town of Newcastle
 4 Pump Street
 P.O. Box 386
 Newcastle, ME 04553

Re: Storm Clean Up 05.05.23

HEI Job No	HEI Job Description	Customer Job No	Payment Terms	Due Date
GS-106	Newcastle General Services		Due Upon Receipt	5/15/2023
Description		Quantity	Rate	Amount
5/5/2023	EXCAVATOR - TB153 TAKEUCHI	24.00	115.00	2,760.00
5/5/2023	EXCAVATOR - PC60	15.00	120.00	1,800.00
5/5/2023	Trucking	40.00	90.00	3,600.00
5/5/2023	Hay	22.00	9.00	198.00
5/5/2023	Grass Seed	1.00	125.00	125.00
5/5/2023	Labor	100.00	65.00	6,500.00
5/5/2023	Mobilization	1.00	350.00	350.00
5/5/2023	1 1/2" Crushed Gravel	6.00	19.00	114.00
5/5/2023	Hay Blower	1.00	400.00	400.00
5/5/2023	Traffic Control Devices East Old County Road Storm damage work			

Subtotal \$ 15,847.00
 Sales Tax (if applicable) \$ 0.00

Total Due \$ 15,847.00

Thank you for your business!

Hagar Enterprises, Inc
 54 Biscay Road
 Damariscotta, ME 04543
 Phone: (207) 563-8588
 Fax: (207) 563-8468



Invoice

Invoice Number
6684
Invoice Date
5/15/2023

www.hagarenterprises.com

Bill To: Town of Newcastle
 4 Pump Street
 P.O. Box 386
 Newcastle, ME 04553

Re: Storm Clean Up 05.05.23

HEI Job No	HEI Job Description	Customer Job No	Payment Terms	Due Date
GS-106	Newcastle General Services		Due Upon Receipt	5/15/2023
Description		Quantity	Rate	Amount
5/5/2023	EXCAVATOR - TB153 TAKEUCHI	15.00	115.00	1,725.00
5/5/2023	EXCAVATOR - PC60	15.00	120.00	1,800.00
5/5/2023	Trucking	40.00	90.00	3,600.00
5/5/2023	TackCoat	1.00	50.00	50.00
5/5/2023	Pavement	15.00	225.00	3,375.00
5/5/2023	1 1/2" Crushed Gravel	14.00	19.00	266.00
5/5/2023	Hay	26.00	9.00	234.00
5/5/2023	Grass Seed	1.00	125.00	125.00
5/5/2023	Hay Blower	1.00	375.00	375.00
5/5/2023	Mobilization	1.00	350.00	350.00
	Cochran Road			
	Storm damage work			

Subtotal \$ 11,900.00
 Sales Tax (if applicable) \$ 0.00

Total Due \$ 11,900.00

Thank you for your business!



207.889.3150
 207.253.5596
 www.vhb.com

Engineers | Scientists | Planners | Designers

157 Capitol Street, Suite 2
 Augusta, ME 04330

Client Authorization

New Contract Date **June 9, 2023**

Amendment No. Project No. **84046.23**

Project Name **Lynch Road, Newcastle**

		Cost Estimate	
		Amendment	Contract Total
To:	Town of Newcastle C/O Seth Hagar P.O. Box 386 (4 Pump Street) Newcastle, Maine 04553	Labor	\$77,053
		Expenses	\$1,000
		S.W. Cole	\$14,000
		TOTAL	\$92,053

E-mail: **roadcommissioner@newcastlemaine.us** **Lump Sum** **Time & Expenses**

Cost + Fixed Fee **Labor Multiplier**

Phone No: **(207) 563-3441** **Estimated Date of Completion:** **2/2024**

Scope of Services:

Task 1 – Project Management & Coordination

- Task 1.1: Project Management & Coordination**
 VHB will manage and administer the project, including coordination with Town and preparation of monthly progress reports/invoices. VHB will prepare for and lead a project kick-off meeting and two additional project coordination meetings.
- Task 1.2: Background Data Collection**
 VHB will obtain and review readily available background data in preparing the PDR for this project. Background data includes: existing plans if available from MaineDOT, historical photographs, bridge inspection records, maintenance records, existing reports, accident history, information from planning studies, traffic studies, flood studies, information from town files, interviews with local residents, and other sources.

Task 2 – Field Surveys and Assessments

- Task 2.1: Field Scour and Geomorphic Stream Assessment**
 VHB will perform a field assessment of Dyer Creek at the crossing. This field visit will include evaluation of natural channel and floodplain geomorphology, stream bankfull geometry, sediment transport, stream alignment, and tidal conditions. The field assessment will also include an evaluation of existing and potential scour patterns of the streambed and banks at the crossing, including local scour and general channel migration.
- Task 2.2: Topographic Survey and Wetland Delineation**
 VHB will conduct a topographic survey of the existing crossing and surrounding area necessary for design and construction. The limits of the survey will include the Lynch Road right-of-way corridor extending approximately 200-feet north and 200-south of the crossing. The thalweg of the stream will be located approximately 300-feet upstream and 300-feet downstream of the Lynch Road crossing. Four (4) channel



cross-sections for hydraulic modeling will be surveyed two upstream and two downstream. Contours will be depicted at an interval of 1 foot on the base map. Survey will be referenced to the NAD83 horizontal and NAVD88 vertical datums. VHB will coordinate with the Town and identify the resident properties that may be impacted by the proposed work. At this time the impacts will only be based on tax map information provided by the Town.

- **Task 2.3 Geotechnical Investigation (By Subconsultant SW Cole)**

S.W.COLE will perform subsurface exploration program consisting of test borings at the crossing location as needed to support geotechnical engineering evaluation for design of the replacement structure. Up to two borings will be performed, extending to a depth of approximately 35 to 40 feet or to bedrock. S.W.COLE will collect soil samples at the test boring locations for laboratory analysis and to assist evaluation. Following completion of the subsurface explorations, S.W.COLE will prepare a geotechnical report summarizing the results of the geotechnical investigation and provide foundation design recommendations to assist and design selection of the replacement structure.

Task 3 – Hydrologic and Hydraulic Analysis

- **Task 3.1 Hydrologic and Hydraulic Analysis**

VHB will evaluate site hydrology incorporating regression analysis developed by the Maine US Geological Survey (USGS) and tidal patterns from National Oceanic and Atmospheric Administration (NOAA) tide gage data. VHB will analyze the hydraulic performance of the existing crossing and identify preferred structure sizing to minimize flood flow velocities and potential scour. Using the US Army Corps of Engineers (USACE) HEC-RAS hydraulic modeling software, VHB will evaluate up to two alternative proposed designs under combined riverine and tidal flood flows, incorporating terrain geometry from field topographic survey supplemented by USGS LiDAR digital terrain data.

As the crossing is not located within a National Flood Insurance Program (NFIP) Zone AE floodplain or regulatory floodway, this task will not include a “No-Rise” analysis or certification. As the crossing is located within endangered Atlantic Salmon habitat, hydraulic analysis will include recommendations for hydraulic opening span and streambed reconstruction to meet aquatic organism passage and MaineDOT Habitat Connectivity Design (HCD) requirements.

- **Task 3.1 Scour Analysis**

This analysis will also include an evaluation of scour susceptibility following FHWA HEC-18 guidance, including calculations of predicted local abutment and general contraction scour elevations at the crossing for a bridge alternative design. This evaluation will also include scour countermeasure sizing and selection recommendations if the scour evaluation indicates the potential for scour below design structure foundation elevations.

Task 4 – Preliminary Design Report (PDR) Development

- **Task 4.1: Alternatives Evaluation**

Based on the results of the geotechnical investigation, as well as hydrologic and hydraulic analysis and habitat connectivity design, VHB will evaluate 1) a rehabilitation alternative for the existing structure, 2) two replacement alternatives: a large box culvert replacement and a bridge replacement. VHB will evaluate alternatives based on complete closure of the roadway utilizing Dodge Road as a detour. Alternatives evaluations will include comparisons of construction cost, freeboard, hydraulic opening, maintenance of traffic, construction schedules, environmental impacts, load capacity, and future maintenance requirements. The recommended alternative cost evaluation will include an itemized list of costs.

- **Task 4.2: Roadway Approaches and Horizontal/Vertical Alignment**

Significant changes to the existing roadway width, as well as the existing horizontal and vertical alignment are not anticipated. A preliminary review of the existing roadway did not identify any significant geometric deficiencies. Following completion of survey, VHB will perform an abbreviated horizontal and vertical alignment review to verify that this assumption is valid. This review will include traffic data and roadway geometry from survey data, horizontal/vertical alignment and roadway cross-sections, sight distances and potential roadside safety concerns. VHB will prepare draft vertical and horizontal alignments and preliminary cross sections for the PDR.



- **Task 4.3: Preliminary Design Report (PDR)**

VHB will develop a PDR that follows the guidelines in Chapter 2 of the Maine Bridge Design Guide. The report will also include the preliminary plans for the project and appendices that contain various supporting data, including a supplemental technical memorandum summarizing hydrologic, hydraulic, and scour analysis.

Project Deliverables

1. Draft Topographic Survey and Wetland Mapping
2. Draft PDR Report Submission Package
3. Final PDR Report Submission Package

Project Schedule

The following estimated schedule is based on receipt of a fully-executed contract and notice to proceed in May 2022. The actual design schedule will be developed with the Town at the Project Kickoff Meeting.

June 2023	Notice to Proceed
July 2023	Survey - Stream Assessment
August 2023	Geotechnical Investigation
September 2023	Structural Inspection
November 2023	Draft PDR
January 2024	Final PDR

Assumptions and Limitations:

1. This proposal includes PDR services only.
2. No attendance at or preparation for public meetings is included in this scope.
3. Town of Newcastle will provide information and review comments in a timely manner and in accordance with the mutually agreed upon team schedule.
4. PDR services will be limited to culvert design and will not include highway design. VHB will only perform a preliminary traffic safety evaluation to identify potential highway alignment deficiencies or hazards. No significant roadway horizontal or vertical profile re-alignment will be required for this project. Approach work will be limited to the extent possible at each end of the bridge and the finish roadway grade will be similar (within 0.5 feet) to the existing grade.
5. The Town will also be responsible for preliminary utility coordination
6. The project will be designed and plans will be developed in English (Imperial) units. Sheet size and layout will be 22-inch x 34-inch, based on current MaineDOT standards.
7. VHB has assumed no additional field work beyond the initial assessment/survey will be performed.
8. VHB has assumed that no retaining walls or roadway embankment reconstruction beyond the bridge structure will be required for this project.
9. This scope is based on VHB's attendance at one field review in Newcastle and up to two project team meetings in Augusta or through Teams.
10. The Town of Newcastle will be responsible for utility coordination. The proposed location of utilities to be relocated or replaced will be the responsibility of the utility companies. VHB is aware that overhead utilities exist throughout the project limits.
11. Final Design & Construction support services are not included.
12. Topographic survey will be limited to the immediate crossing location.



Prepared By: Robert S. Blunt, P.E.

Department Approval: Timothy Bryant, P.E.

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

Vanasse Hangen Brustlin, Inc. Authorization

Client Authorization *(Please sign original and return)*

By _____

By _____

Print Eric Williams _____

Print _____

Title Survey Manager - Maine _____

Title _____

Date _____

Date _____



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

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

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

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

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

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

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

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

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

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

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

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

Client recognizes that information recorded on or transmitted as electronic media, including CADD documents ("Electronic Documents") is subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the Electronic Documents are provided to Client for informational purposes only and are not represented as suitable for any use or purpose.

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

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

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

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

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

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

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

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

LIMITATION ON VHB'S RESPONSIBILITY AND JOBSITE SAFETY. VHB will not be responsible for the acts or omissions of

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

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

DISPUTE RESOLUTION. All questions in dispute under this Agreement shall be submitted to non-binding mediation as a condition precedent to the institution of legal proceedings. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representative and shall meet within ten (10) days after the service of the notice. The parties shall then attempt to resolve the dispute within ten (10) days of meeting. Should the parties be unable to agree on a resolution of the dispute, then the parties shall proceed with mediation in accordance with the mediation rules of the American Arbitration Association. The cost of mediation shall be borne equally by both parties. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONSTRUCTION PHASE SERVICES

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



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

SHOP DRAWINGS. VHB's review and approval of submittals such as shop drawings, product data, samples, and other data, shall be for the limited purpose of checking for conformance with the design concept and the information in VHB's documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades, or construction safety precautions, all of which are the sole responsibility of Contractor and other unrelated parties. Review of a specific item shall not indicate that VHB has reviewed the entire assembly of which the item is a component. VHB shall not be responsible for any deviations from VHB's documents or other documents that are not brought to the attention of VHB in writing by Contractor. VHB shall not be required to review partial submissions or those for which submission of correlated items have not been received.

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

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

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

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

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

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



Prepared By: **Robert S. Blunt, P.E.**

Department Approval: **Timothy Bryant, P.E.**

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

Vanasse Hangen Brustlin, Inc. Authorization

Client Authorization (Please sign original and return)

By _____

By Kevin L. Sutherland

Print Eric Williams

Print Kevin L. Sutherland

Title Survey Manager - Maine

Title Interim Town Manager (Newcastle)

Date _____

Date 7/11/2023