

## **AGREEMENT FOR PROFESSIONAL SERVICES**

### **River's Peak and Overlook Road Data Collection and Evaluation, Barrington, NH**

This is an agreement between the Town of Barrington (Client) and Hoyle, Tanner & Associates, Inc. (Consultant) for professional services for the Client's project which is generally described as coordination of data collection and evaluation of Overlook Road's verifiable subgrade and pavement construction to verify conformance with the approved typical section and NHDOT Standard Specifications in place at the time of construction. The Consultant's services under this agreement are generally described as follows: subconsultant coordination, review of subconsultant report and coordination with the Town.

The effective date of this Agreement is July 27, 2021. Client and Consultant further agree as follows:

#### **Article 1: Scope of Services**

Consultant shall provide the services set forth in Exhibit A.

#### **Article 2: Client's Responsibilities:**

Client shall provide to Consultant all of Client's criteria and information as to requirements for the Project including objectives, constraints, performance requirements, and budgetary limitations.

Client shall provide Consultant with all information available to Client pertinent to Consultants work under this Agreement. Client shall assist Consultant as necessary to obtain available pertinent information from Federal, State or local offices or from other engineers or others who have previously worked for Client on matters affecting this Project. Client shall also make available all information Client may have relative to concealed, subsurface, soil, and other conditions that are not apparent from visual, non-invasive, and non-destructive observations of the applicable site.

It may be necessary for Consultant's personnel and/or subconsultants to enter areas of the Project property. Client shall arrange for and provide Consultant with access to such areas on a timely basis.

Client shall examine all documents prepared for the Project by Consultant; and at Client's option, obtain advice from legal counsel, insurance counsel, and other appropriate advisors, and advise Consultant of any opinion or recommendations resulting from said advice.

Client shall give prompt notice to Consultant whenever Client becomes aware of anything that would have a significant effect on the scope or timing of Consultant's services.

Client shall bear all costs related to compliance with this Article of this Agreement.

If Client engages a construction manager or any other professionals for the Project in addition to Consultant; Client must define the duties and responsibilities of each professional services provider.

During the construction of the project it is recommended Client or his/her designated representative, other than Consultant, attend the following meetings: Pre-construction bid meeting, bid opening, pre-construction conference, construction progress meetings, and Project completion meetings.

Client shall advise Consultant of any safety or security programs which may be applicable to Consultant during Project site visits.

Client shall make decisions and perform other Client responsibilities in a timely manner so as not to delay Consultant's performance of services.

Client's responsibilities may include those agreed upon and identified in Exhibit A.

### **Article 3: Schedule**

Consultant is authorized to begin providing services on the effective date of the Agreement. Consultant shall perform services in conformance with the schedule guided by and subject at all times to sound judgment and practice in accordance with law and professional ethics.

If the schedule changes or orderly progress of services is impaired through no fault of Consultant; the schedule for services shall be adjusted and compensation may be adjusted by amendment to this Agreement.

Specific schedule requirements for providing services may be provided in Exhibit D.

Services will be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Notwithstanding anything to the contrary contained herein, Consultant shall not be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control or without its negligence.

### **Article 4: Compensation and Payment for Services**

Consultant shall charge for all services requested by Client and rendered by Consultant in connection with the Project in strict accordance with the conditions set forth in this Article of the Agreement.

The charges made by Consultant under this Article and the payment of said charges by Client shall constitute full compensation for all expenses incurred by Consultant in connection with the services rendered including F.I.C.A. taxes, Federal and State unemployment taxes, costs in connection with employees' benefits, office expenses, supplies, and equipment, the general costs of doing business, and Consultant's profit; and Subconsultants engaged by Consultant for the Project, if any.

Consultant's compensation for services and the method of compensation shall be as described in Exhibit C.

Consultant shall prepare and submit monthly applications for payment for services completed under this Agreement.

Invoices shall be Consultant's standard form or other form approved by Client.

Invoices are due within thirty (30) days of receipt by Client.

If payments are not made on time, Consultant may suspend services under this Agreement, after giving Client seven (7) days' notice, until payment is received by Consultant. Client waives any and all claims against Consultant due to such suspension of services and agrees to appropriate adjustments to the Project schedule and Consultant's schedule.

Client may withhold payment of a disputed invoice, however, Client must advise Consultant promptly of the reason for doing so and Client agrees to process and pay any portion of the invoice which is not in dispute. Client shall not withhold payments based on damages that Client has incurred or alleges that it has incurred unless Consultant has been adjudged liable for such damages and failed to compensate Client accordingly within 30 days of such determination.

#### **Article 5: Standard of Care**

The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the skill and care used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

#### **Article 6: Opinions of Cost**

When included in Consultant's scope of services, opinions or estimates of probable construction costs are prepared on the basis of Consultant's experience and qualifications and represent Consultant's judgment as a professional generally familiar with the industry. However, since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or Contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from Consultant's opinions or estimates of probable construction cost.

#### **Article 7: Compliance with Laws and Regulations**

Consultant shall review codes, regulations, and laws applicable to Consultant's services and shall exercise professional care to design in compliance with all applicable codes, regulations and laws in effect as of the effective date of this Agreement. Consultant cannot warrant that the applicable interpreting or enforcing authority will similarly interpret such requirements.

If such codes, regulations and laws change during the project and are imposed during the project by government authorities with jurisdiction over the project, such changes may require changes to the Consultant's scope of services, schedule and compensation.

#### **Article 8: Underground Facilities**

The location of underground facilities may be required in order to perform subsurface explorations for the project and the location of underground facilities may be shown on the construction Contract drawings.

Unless otherwise provided, Client shall provide Consultant with the locations of underground facilities, structures and utilities. If the locations are not known, are inaccurate or cannot be confirmed, Client accepts and retains all risk of damages or losses resulting from the exploration work.

Consultant will take reasonable precautions to avoid damage to underground facilities and shall coordinate the locations of such facilities with known owners of the facilities.

The information shown on the construction Contract drawings with respect to underground facilities shall be based on information furnished by the facility owners to the Client and Consultant and Consultant shall not be responsible for the accuracy or completeness of such information.

If conditions or locations of underground facilities are found to be different during construction appropriate adjustments, if any, shall be made in accordance with the provisions of construction Contract.

#### **Article 9: Construction Phase Services**

If this Agreement provides for any construction phase services by Consultant, it is understood that the Contractor, not Consultant, is responsible for the construction of the project, and that Consultant is not responsible for the acts or omissions of any Contractor, Subcontractor or material supplier; for safety precautions, programs or enforcement; or for construction means, methods, techniques, sequences and procedures employed by the Contractor.

Consultant, including the resident project representative if provided, does not assume any responsibility for the Contractor's failure to perform the construction in accordance with the Contract documents.

Site visits and observations by Consultant are intended to provide Client greater confidence that the completed work by the Contractor will conform to the Contract documents; and site visits are not detailed inspections and do not extend to every aspect of the Contractor's work.

#### **Article 10: Design without Construction Phase**

Consultant and Client agree that if Consultant's services do not include construction phase services, Client or Client's designated agent shall be solely responsible for interpretation of the Contract documents and observing the work of the Contractor to discover, correct and mitigate errors, inconsistencies or omissions and if Client authorizes deviations from Consultant prepared documents or if conditions are discovered that are not accounted for in the documents prepared by Consultant, Client shall not bring any claim against Consultant and shall indemnify and hold Consultant, its agents and employees harmless from and against claims, losses, damages and expenses, including but not limited to defense costs and time of Consultant, to the extent such claims, loss, damage or expenses arise out of or results in whole or in part from such deviations, regardless of whether or not such claims, loss damage or expense is caused in part by a party indemnified under this provision.

#### **Article 11: Use of Documents and Ownership of Electronic Documents**

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein. Consultant grants Client a license to use instruments of Consultant's professional service for the purpose

of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission and professional involvement, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

Documents that may be relied upon by Client are limited to those that are signed or signed and sealed by Consultant, which may be in electronic or hardcopy format in conformance with professional engineering practice regulations in effect in project jurisdiction. Any conclusion or information obtained or derived from such other documents will be at the user's sole risk.

When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Consultant at the beginning of this assignment.

#### **Article 12: Insurance**

Consultant procures and maintains insurance as set forth in Exhibit B. Consultant shall cause Client to be an additional insured on any applicable general liability insurance policy of the Consultant. Consultant shall provide Client reasonable notice of changes to any policy.

Client shall procure and maintain workers' compensation insurance, employer's liability insurance, general liability insurance, excess or umbrella liability and automobile liability insurance. Client shall cause Consultant and its subconsultants to be additional insureds on any general liability policies and as loss payees on any property insurance policies of Client applicable to the projects.

Client shall require Contractor to carry workers' compensation, general liability, property damage, motor vehicle damage and injuries and other insurances to protect Client and Consultant and subconsultant; and Client shall require Contractor's policies to cover Consultant and its subconsultants as additional insureds.

Client may request Consultant and/or subconsultants provide and maintain additional insurance coverage, at the expense of client.

#### **Article 13: Suspension and Termination**

Client may terminate this Agreement with seven days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Consultant has been paid in full all amounts due for services, expenses and other related charges.

#### **Article 14: Indemnification and Limitation of Liability**

To the fullest extent permitted by law, Consultant shall indemnify Client, its officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of Consultant or

Consultant's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this Agreement.

To the fullest extent permitted by law, Client shall indemnify Consultant, its officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of Client or Client's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this Agreement.

#### **Article 15: Dispute Resolution**

Client and Consultant agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, effective as of the date of this agreement.

#### **Article 16: Environmental Conditions**

It is acknowledged by both parties that Consultant's scope of services does not include any services related to the presence at the site of asbestos, PCBs, petroleum, hazardous waste or radioactive materials. Client acknowledges that Consultant is performing professional services for Client and Consultant is not and shall not be required to become an "arranger," "operator," "generator" or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA). Further, Consultant has no responsibility for the handling, identification, remediation, or presence of any hazardous materials at the site.

#### **Article 17: Controlling Law**

This Agreement shall be governed by the laws of the State of New Hampshire.

#### **Article 18: Successors and Assigns**

Client and Consultant each binds itself, its partners, successors, executors, administrators and assigns, to the other party of the Agreement and to the partners, successors, executors, administrators and assigns, for such other party to all covenants of this Agreement.

Except as above, neither Client nor Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other party hereto.

Nothing in this paragraph shall prevent Consultant from employing such independent subconsultants as Consultant may deem appropriate to assist in the performance of the services of this Agreement.

## Article 19: Severability

If any of the terms and conditions of this agreement are deemed unenforceable or invalid, in whole or in part, by judgment or order of a court, that shall not affect the remaining terms and conditions of the Agreement and they shall remain in full force and effect.

## Article 20: Waiver of Provisions

Non-enforcement of any provision of this Agreement by Client or Consultant shall not constitute a waiver of that provision; and non-enforcement shall not prohibit subsequent enforcement of the provision or any other provision of the Agreement.

### ACCEPTANCE


For Hoyle, Tanner & Associates, Inc.:

  
\_\_\_\_\_  
Sean T. James, P.E.  
Senior Vice President

\_\_\_\_\_  
July 15, 2021  
(Date)

For The Town of Barrington

PLEASE PROCEED WITH THE PROJECT AS INDICATED.

  
\_\_\_\_\_  
(Name)

\_\_\_\_\_  
July 27, 2021  
(Date)

\_\_\_\_\_  
Town Administrator, duly authorized  
(Title)

**EXHIBIT A**  
**Scope of Services**

**Evaluation Phase**

Consultant shall:

- S-1. Coordinate Subconsultant services for data collection.
- S-2. Review collected data from initial investigation, to determine if additional documentation should be acquired.
- S-3. Review geotechnical report provided by Subconsultant.
- S-4. Provide a letter report including recommendations to the Town based upon data collected by geotechnical consultant.
- S-5. Provide overall project management including scheduling, client coordination and allocation of resources.

**Assumptions:**

Consultant assumes:

- A-1. During the duration of the services performed under this Agreement, direct salaries may be adjusted as part of Hoyle, Tanner's company-wide salaries for cost of living and merit increases and shall not be limited to employees working on this project.
- A-2. Hoyle, Tanner will arrange for a construction testing agency to perform material collection and testing of the bank run gravel and the crushed gravel specified in the approved plan set. All soil materials will be tested by personnel certified in sampling and testing by the NorthEast Transportation Training & Certification Program (NETTCP). We intend to use SW Cole Engineering, Inc. from Somersworth, New Hampshire for these services. An estimate of the cost for these services is included in our estimate of fee and reimbursable expenses indicated in Exhibit C.
- A-3. Dispute resolution services regarding finding or recommendations between Client and Contractor will not include mediation, arbitration or litigation. Dispute resolution will be solely handled between the Client, Contractor and Design Engineer as necessary. Should the dispute resolution escalate to a point where mediation, arbitration or litigation is required, Hoyle, Tanner's fees and rates may be renegotiated should Client require participation in the proceedings.
- A-4. Subcontractor shall be responsible for means, methods and site safety during the data collection process.

**Exhibit B**  
**INSURANCE**

Consultant has the following Insurance coverages:

a.	Workers' Compensation and Employers' Liability	\$	1,000,000	Each Accident
		\$	1,000,000	Disease-Each Employee
		\$	1,000,000	Disease-Policy Limit
b.	General Liability Commercial Package	\$	1,000,000	Each Occurrence
		\$	2,000,000	General Aggregate
		\$	2,000,000	Products- Comp/Op Agg
		\$	1,000,000	Personal & Adv Injury
		\$	10,000	Med Exp (any one person)
c.	Umbrella	\$	10,000,000	Each Occurrence
		\$	10,000,000	Aggregate
d.	Business Auto (Hired and Non-Owned)	\$	1,000,000	Combined Single Limit Per Accident
e.	Professional Liability	\$	5,000,000	Per claim
		\$	5,000,000	Annual Aggregate

**EXHIBIT C**  
**Compensation for Services**

Client shall pay Consultant for services set forth in Exhibit A and in accordance with the provisions of Article 4 of this Agreement as follows:

**Standard Hourly Rates Method of Payment**

Evaluation Phase (Tasks S-1 through S-5)	\$ 9,995	Estimated Amount
Total Compensation	\$ 9,995	Estimated Amount

The estimated amount shall equal the cumulative hours charged by each class of Consultant's personnel time applicable standard hourly rates for each category. The estimated amounts include reimbursable expenses such as transportation, postage, telephone, fax, printing and equipment rental; and include charges of subconsultants engaged by Consultant.

Consultant shall not exceed the total Compensation without the approval of Client.

Consultant shall bill Client based on hours charged at standard billing rates plus reimbursable expenses incurred plus subconsultant expenses for the billing period. During the term of this Agreement, direct salaries may be adjusted as part of Hoyle Tanner's companywide revisions due to increases in cost of living as well as merit and shall not be limited to employees assigned to provide services under this Agreement., Tanner's companywide revisions due to increases in cost of living as well as merit and shall not be limited to employees assigned to provide services under this Agreement.

**EXHIBIT D**  
**Schedule**

Consultant shall perform the services indicated in Exhibit A in conformance with the following:

Evaluation Phase Services S-1- through S-5

- Data Collection 4 Weeks\*
- Geotechnical Report Review and Letter Report Outlining  
Recommendations 3 Weeks\*

\* From the Effective Date of the Notice to Proceed