



**NEVADA COMMISSION FOR THE RECONSTRUCTION OF THE V&T RAILWAY
 (“V&T Railway Commission”)
 Agenda Report**

Date Submitted: 09/21/23

Meeting Date Requested: 09/27/23

Time Requested: 10 Minutes

To: NEVADA COMMISSION for the RECONSTRUCTION of the V&T RAILWAY Commissioners

From: David Peterson

Subject Title: Discussion and possible action regarding a proposed agreement for on-call inspection services and reports for the US 50 bridge crossing, all culverts along the alignment, Tunnel No. 2, slopes and ditches and the Overman Embankment with Wood Rodgers, Inc., for a not to exceed amount of \$5,030, effective through June 30, 2024.

Staff Summary: *If this Agreement is approved, Wood Rodgers, Inc. will perform inspections and reports at the following cost: the US bridge crossing up to \$1,400; all culverts along the alignment up to \$1,500; Tunnel No. 2 up to \$1,200; slopes and ditches and the Overman embankment up to \$500; and one V&T Commission meeting per year for a lump sum of \$500.*

Type of Action Requested:

Resolution

Ordinance

Formal Action/Motion

Other (Specify) Presentation Only

Recommended Board Action:

I move to approve agreement for on-call inspection services and reports for the US 50 bridge crossing, all culverts along the alignment, Tunnel No. 2, slopes and ditches and the Overman Embankment with Wood Rodgers, Inc., for a not to exceed amount of \$5,030, effective through June 30, 2024.

Applicable Statute, Code, Policy, Rule or Regulation: n/a

Fiscal Impact: \$5,030

Explanation of Impact:

Funding Source: 53055-000 – Track Maintenance

Supporting Material/Attachments: 20230927_VT_Item 7_Budget

Prepared By: Allyson Bolton, Atypical Consulting and Events

Contract #:	FY24-C005

**CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR
FOR LESS THAN \$50,000**

A Contract Between

“Commission”:	Nevada Commission for the Reconstruction of the V&T Railway, a body corporate and politic
Address:	P.O. Box 1711
City, State, Zip Code:	Carson City, NV 89702
Contact:	David Peterson, Chairman
Phone:	775-686-9037
Fax:	
Email:	dpeterson@visitcarsoncity.com

and

“Contractor”:	Wood Rogers, Inc.
Address:	1361 Corporate Boulevard
City, State, Zip Code:	Reno, NV 89502
Contact:	Gary Luce
Phone:	775-823-4068
Fax:	775-823-4066
Email:	gluce@woodrogers.com

WHEREAS, NRS 333.700 authorizes officers, departments, institutions, boards, commissions, and other agencies in the Executive Branch of the State Government which derive their support from public money in whole or in part to engage services of persons as independent contractors; and

WHEREAS, the Commission desires to retain the Contractor for on call testing and inspection services; and

WHEREAS, the Contractor is desirous of serving the Commission as its on call testing and inspection services provider; and

WHEREAS, the Commission and Contractor agree that Contractor shall be compensated for all services rendered as herein below set forth; and

WHEREAS, it is deemed that the service of Contractor is both necessary and in the best interests of the Commission.

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

- CONTRACT TERM.** This Contract shall be effective as noted below, unless sooner terminated by either party as specified in *Section 7, Contract Termination*.

Effective from:	Upon approval of the Commission, expected to be September 27, 2023	To:	June 30, 2024
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- NOTICE.** All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated above. Notices may be given: (a) by delivery in person; (b) by a nationally recognized next day courier service, return receipt requested; or (c) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or email to the address(es) such party has specified in writing.

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3. **SCOPE OF WORK.** The Scope of Work is described below, which is incorporated herein by reference:

DESCRIPTION OF SCOPE OF WORK:
Contractor will provide services as outlined in the attached document labeled: Proposals for On Call Testing and Inspection Services

4. **CONSIDERATION.** The parties agree that Contractor will provide the services specified in *Section 3, Scope of Work* at a cost as noted below:

Total Contract or installments payable at:	Please see attached document labeled: Proposals for On-call Testing and Inspection Services
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Total Contract Not to Exceed:	\$5,030
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The Commission does not agree to reimburse Contractor for expenses unless otherwise specified in the Scope of Work or incorporated Attachments (if any).

5. **BILLING SUBMISSION: TIMELINESS.** The parties agree that timeliness of billing is of the essence to the Contract and recognize that the State is on a Fiscal Year. All billings for dates of service prior to July 1 must be submitted to the State no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject Contractor to an administrative fee not to exceed one hundred dollars (\$100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the State of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to Contractor.

6. **INSPECTION & AUDIT.** Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) and as required by State and federal law, complete and accurate records as are necessary to fully disclose to the State or United States Government, sufficient information to determine compliance with all State and federal regulations and statutes, and compliance with the terms of this contract, and agrees that such documents will be made available for inspection upon reasonable notice from authorized representatives of the State or Federal Government.

7. **CONTRACT TERMINATION.**

A. Termination Without Cause. Regardless of any terms to the contrary, this Contract may be terminated upon written notice by mutual consent of both parties. The State unilaterally may terminate this contract without cause by giving not less than thirty (30) days' notice in the manner specified in *Section 2, Notice*. If this Contract is unilaterally terminated by the State, Contractor shall use its best efforts to minimize cost to the State and Contractor will not be paid for any cost that Contractor could have avoided.

B. State Termination for Non-Appropriation. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the Contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

C. Termination with Cause for Breach. A breach may be declared with or without termination. A notice of breach and termination shall specify the date of termination of the Contract, which shall not be sooner than the expiration of the Time to Correct, if applicable, allowed under *Subsection 7D*. This Contract may be terminated by either party upon written notice of breach to the other party on the following grounds:

- 1) If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or

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- 2) If any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- 3) If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the Bankruptcy Court; or
- 4) If the State materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- 5) If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- 6) If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

D. Time to Correct. Unless the breach is not curable, or unless circumstances do not permit an opportunity to cure, termination upon declared breach may be exercised only after service of formal written notice as specified in **Section 2, Notice**, and the subsequent failure of the breaching party within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has been corrected. Upon a notice of breach, the time to correct and the time for termination of the contract upon breach under **Subsection 7C**, above, shall run concurrently, unless the notice expressly states otherwise.

8. **REMEDIES**. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. For purposes of an award of attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars (\$150.00) per hour. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.
9. **LIMITED LIABILITY**. The State will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor, for the Fiscal Year budget in existence at the time of the breach. Contractor's tort liability shall not be limited.
10. **INDEMNIFICATION AND DEFENSE**. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any breach of the obligations of Contractor under this Contract, or any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents. Contractor's obligation to indemnify the State shall apply in all cases except for claims arising solely from the State's own negligence or willful misconduct. Contractor waives any rights of subrogation against the State. Contractor's duty to defend begins when the State requests defense of any claim arising from this Contract.
11. **REPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS**. Contractor represents that it is an independent contractor, as defined in NRS 333.700(2) and 616A.255, warrants that it will perform all work under this contract as an independent contractor, and warrants that the State of Nevada will not incur any employment liability by reason of this Contract or the work to be performed under this Contract. To the extent the State incurs any employment liability for the work under this Contract; Contractor will reimburse the State for that liability.

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12. **INSURANCE SCHEDULE.** Unless expressly waived in writing by the Contracting Agency, Contractor must procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum requirements specified below. Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307, for losses arising from work/materials/equipment performed or provided by or on behalf of Contractor. By endorsement to Contractor’s automobile and general liability policies, the State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of Contractor. Contractor shall not commence work before Contractor has provided evidence of the required insurance in the form of a certificate of insurance and endorsement to the Contracting Agency of the State.

A. Workers’ Compensation and Employer’s Liability Insurance.

- 1) Contractor shall provide proof of worker’s compensation insurance as required per Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) If Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310 and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the contracting State agency a fully executed “Affidavit of Rejection of Coverage” form under NRS 616B.627 and NRS 617.210.

B. Commercial General Liability – Occurrence Form. The Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- | | |
|--|-------------|
| 1) General Aggregate | \$2,000,000 |
| 2) Products – Completed Operations Aggregate | \$1,000,000 |
| 3) Personal and Advertising Injury | \$1,000,000 |
| 4) Each Occurrence | \$1,000,000 |

Mail all required insurance documents to the Contracting Agency identified on page one of the Contract.

13. **WAIVER OF BREACH.** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

14. **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

15. **STATE OWNERSHIP OF PROPRIETARY INFORMATION.** Any data or information provided by the State to Contractor and any documents or materials provided by the State to Contractor in the course of this Contract (“State Materials”) shall be and remain the exclusive property of the State and all such State Materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract.

16. **PUBLIC RECORDS.** Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State may have the duty to disclose unless a particular record is made confidential by law or a common law balance of interests.

17. **GENERAL WARRANTY.** Contractor warrants that all services, deliverables, and/or work products under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

18. **DISCLOSURES REGARDING CURRENT OR FORMER STATE EMPLOYEES.** For the purpose of State compliance with NRS 333.705, Contractor represents and warrants that if Contractor, or any employee of Contractor who will be performing services under this Contract, is a current employee of the State or was employed by the State within the preceding 24 months, Contractor has disclosed the identity of such persons, and the services that each such person will perform, to the Contracting Agency.

19. **GOVERNING LAW: JURISDICTION.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-

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of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.

- 20. ENTIRE CONTRACT AND MODIFICATION.** This Contract and its Scope of Work constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Office of the Attorney General and the State Board of Examiners, as required. This form of Contract, including any amendments to the Contract, is not authorized for use if the “not to exceed” value **Section 4, Consideration** equals or exceeds \$50,000. This Contract, and any amendments, may be executed in counterparts.

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

Independent Contractor's Signature Date

Independent Contractor's Name and Title

Commission Authorized Signature Date

Name and Title



WOOD RODGERS

September 19, 2023

Nevada Commission for the Reconstruction of the V&T Railway

David Peterson, Chairman
PO Box 1711
Carson City, Nevada 89702

RE: Proposals for On-call Testing and Inspection Services

Dear Mr. Peterson,

Pursuant to your request, Wood Rodgers, Inc. is pleased with the opportunity to provide this proposal for on-call inspection services for the V&T Railway. For the preparation of this proposal, we have reviewed the past inspection records for the items listed below. Wood Rodgers has previously been performing inspections for Tunnel No. 2, slopes, and the Overman embankment and reporting to KL Dorr Consulting, LLC.

SCOPE OF WORK

It is our understanding that the scope of work will include the required annual inspections and reports for:

- The US 50 bridge (G-2898) crossing.
- All Culverts along the alignment.
- Tunnel No. 2.
- Slopes and Ditches and the Overman Embankment.

Records of the annual inspection would be kept in a consolidated fashion in Wood Rodgers files as well as being transmitted to the client within 30 days of completion of the fieldwork. In addition, Wood Rodgers would be available for emergency response to geotechnical issues such as storm damage or other unforeseen events.

Wood Rodgers supervisory personnel for the field work would be as follows:

- Gary C. Luce P.E., Geotechnical Engineer
- Justin McDougal, P.E., Geotechnical Engineer
- Jim Koch, CEM, Senior Geologist/Construction Testing Manager

PROPOSED FEES AND CONDITIONS

It is assumed that the client will make available the railroad contractors high rail vehicle (and driver) or other suitable vehicle for access to perform culvert inspections or potentially for emergency response activities. We propose to perform the described engineering inspection services for a not to exceed (NTE) fee of \$5,030. Wood Rodgers understands that the contract period is to extend until June 30, 2024.

A breakdown of cost by task is as follows:

- The US 50 bridge crossing NTE \$1400.
- All Culverts along the alignment NTE \$1,500*.
- Tunnel No. 2. NTE \$1,200.
- Slopes and Ditches and the Overman Embankment NTE \$500.
- One Commission Meeting per year Lump Sum \$430

Our fees will be invoiced on a time and materials basis which will include a Senior Geologist, Geotechnical Engineer(s), and testing equipment. Any "extra work" including meetings, emergency responses or other work outside of the described scope of work will be completed in accordance with our current fee schedule. Written authorization will be required to exceed the amounts stated above for "extra work".

Wood Rodgers can start the work within seven to ten working days upon verbal or written authorization. These fees are valid for a period of 60 days from the date of this proposal. Our services and any additional services required would be provided in accordance with the attached Exhibit A *Wood Rodgers Invoicing, Payment & Liability Policies*, and Exhibit B *Wood Rodgers Standard Fee Schedule* or an mutually acceptable contract of the clients choosing. A final invoice will be submitted following delivery of the report. If unanticipated field conditions are encountered which require an increase to the not-to-exceed amount, we would not proceed with a modified scope of services amount without obtaining your verbal (and subsequent written) authorization.

LIMITATIONS

The proposed scope of services does not include engineering implementation of maintenance recommendations or the preparation of construction documents. Wood Rodgers is not a railroad engineering design firm and explicitly excludes design and railway operations services from our proposal.

Should you have any questions regarding this proposal, or if we may be of further service, please contact the undersigned at your convenience Thank you for the opportunity to provide geotechnical services for the V&T Railway through the Commission.

EXECUTION OF CONTRACT

Please carefully review the contents of this proposal and the attached exhibits. If they meet with your approval, execute the contract by signing below. We will then endorse the document and return one fully executed copy to you. Alternatively, a contract of your choosing, which is mutually acceptable to both parties, can be substituted.

Sincerely,

Wood Rodgers, Inc.



**Gary Luce, PE
Senior Engineer**

**Justin McDougal, PE
Associate, Senior Engineer**

By:

Signature

Date

Print Name

Attachments: Exhibit A Wood Rodgers Invoicing, Payment & Liability Policies,
Exhibit B, Wood Rodgers Standard Fee Schedule.

EXHIBIT A



WOOD RODGERS

INVOICING, PAYMENT & LIABILITY POLICIES

1. "Reimbursable expenses", including, but not limited to, mileage, blueprints, and reproduction are not included in proposal costs unless specifically identified in the scope of work. Such costs shall be billed at the stated mileage rate or vendor invoice.
2. Invoices are submitted monthly by Wood Rodgers, Inc. Client shall notify Wood Rodgers, Inc. in writing of any and all objections, if any, to an invoice within thirty (30) days of the invoice date. Otherwise, the invoice shall be deemed proper and accepted by the Client. Amounts invoiced are due and payable upon receipt. Client's account shall be considered delinquent if Wood Rodgers, Inc. does not receive full payment within forty-five (45) days after the invoice date.
3. A service charge shall be applied to delinquent accounts at the rate of 1.5% per month. Payment thereafter shall be applied first to accrued interest and then to unpaid principal. Client shall pay all costs and expenses, including without limitation, reasonable attorney's fees, incurred by Wood Rodgers, Inc. in connection with collection of delinquent accounts of Client.
4. If a delinquency occurs, Wood Rodgers, Inc. may choose to suspend work upon ten (10) days written notice to Client. Wood Rodgers, Inc. shall recommence work once such delinquency is completely cured and any and all attendant collection costs, fees, or other amounts required to be paid by Client under this contract are paid in full. If a delinquency by Client occurs and Wood Rodgers, Inc. chooses not to suspend work, no waiver or estoppel shall be implied. Client agrees and understands that if Wood Rodgers, Inc. suspends its work pursuant to this paragraph, Wood Rodgers, Inc. shall not be liable for any costs or damages, including but not limited to delay and consequential damages, to the Client, other owner of the property where such work is being performed, or any other third party, that may arise from or be related to such work suspension. Client agrees to indemnify and hold Wood Rodgers, Inc. harmless from and against any and all damages, costs, attorney's fees, and/or other expenses which Wood Rodgers, Inc. may incur as a result of any claim by any person or entity arising out of such suspension of work.
5. When non-standard billing is requested by Client, time spent by office administrative personnel in preparation of such billing shall be considered an extra cost to the project and shall be billed as such.
6. In providing services under this Agreement, Wood Rodgers, Inc. will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
7. Client and Wood Rodgers, Inc. recognize the risks, rewards, and benefits of the project and Wood Rodgers, Inc. total fee for services. The risks have been allocated such that Client and Wood Rodgers, Inc. agrees that, to the fullest extent permitted by law, the total liability of Wood Rodgers, Inc. to Client and to all construction contractors and subcontractors on the project for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes shall not exceed the total aggregate liability of **\$50,000.** Such causes include but are not limited to Wood Rodgers, Inc. negligence, errors, omissions, strict liability, and breach of contract and breach of warranty.
8. This agreement and the applicable Services Authorization & Agreement or Proposal/Contract constitute the entire agreement between the parties and there are no conditions, agreements or representations between the parties except as expressed in said documents. It is not the intent of the parties to this agreement to form a partnership or joint venture.

EXHIBIT "B"



NEVADA FEE SCHEDULE

CLASSIFICATION	STANDARD RATE
Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$250
Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$235
Senior Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$215
Senior Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$200
Project Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$190
Project Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$180
Engineer/Geologist/Surveyor/Planner/GIS/LA* II	\$165
Engineer/Geologist/Surveyor/Planner/GIS/LA* I	\$155
Assistant Engineer/Geologist/Surveyor/Planner/GIS/LA*	\$130
Designer	\$90
Senior CAD Technician/Graphics Designer II	\$155
Senior CAD Technician/Graphics Designer I	\$145
CAD Technician/Graphics Designer	\$130
Project Coordinator	\$130
Administrative Assistant	\$110
Construction Manager	\$165
Senior Inspector II	\$145
Senior Inspector I	\$130
Inspector II	\$125
Inspector I	\$105
Senior Field Technician I	\$130
Field Technician II	\$110
Field Technician I	\$95
1 Person Survey Crew	\$165
2 Person Survey Crew	\$215
3 Person Survey Crew	\$280
Consultants, Outside Services, Materials & Direct Charges	Cost Plus 10%
Overtime Work, Expert Witness Testimony and Preparation	Rate Plus 50%

*LA = Landscape Architect

Blueprints, reproductions, and outside graphic services will be charged at vendor invoice. Auto mileage will be charged at the IRS standard rate, currently 58.5 cents per mile.

Fee Schedule subject to change January 1, 2023.