

# GREEN MOUNTAIN ENGINEERING, INC.

1438 South Brownell Road  
Williston, VT 05495-7274  
(802) 862-5590 (Fax) 862-7598

June 4, 2019  
REVISED June 11, 2019

Ms. Kathleen Ramsay, Town Manager  
Town of Middlebury  
77 Main St.  
Middlebury, VT 05753

Re: Agreement for Professional Engineering Services  
Cady Road Culvert Replacement Final Design, Bid & Construction Engineering Services  
GME Project No. 29-007

Dear Kathleen;

This letter is written pursuant to your (CLIENT) request for Green Mountain Engineering, Inc., (CONSULTANT) to provide professional Engineering services as outlined below. It is to be considered an AGREEMENT when executed and witnessed by a duly authorized agent of the CLIENT.

## SCOPE OF SERVICES

The CONSULTANT will perform the following services as described in the Project Understanding (Attachment No. 1) of the Cady Road Culvert Replacement Project. Professional services are to be performed by the CONSULTANT as detailed in Attachment No. 2 of this AGREEMENT. The CLIENT may, from time to time, request changes in the scope of services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of the CONSULTANT's compensation, which are mutually agreed upon by and between the CLIENT and the CONSULTANT, shall be incorporated into this AGREEMENT by written amendments signed by both parties.

## BASIS OF COMPENSATION

For services as outlined in Attachment No. 2, the CLIENT agrees to compensate the CONSULTANT based on the following Not to Exceed (NTE) costs as follows:

<u>Task Items</u>	<u>Manhours (if hourly basis)</u>	<u>Amount</u>	<u>Basis</u>
Items No. 1 - 7	92	\$8,800	Hourly
Item No. 8	34	\$3,600	Hourly

Item No. 9	16	\$1,800	Hourly
Item No. 10	29	\$2,750	Hourly
Item No. 11	60 Full-Time @ \$85/hr. <u>15 Part-Time @ \$85/hr.</u> 135 Total (plus miles)	\$7,000	Hourly
Item No. 12	10	\$850	Hourly

The total engineering fee for the Cady Road Culvert Replacement Project is Twenty-Four Thousand Eight Hundred Dollars (\$24,800.00).

Billing for each work item shall be on a monthly basis as follows:

**Hourly:** A Fee based on hours incurred in the interest of the Project, times the hourly rate listed, up to the Not to Exceed amount listed.

It is understood that the ENGINEER's labor rates may be adjusted annually in January. The fees for services provided under this AGREEMENT and any fully executed Amendment(s) shall be the current rates at the time that the work is performed.

**PROJECT SCHEDULE:**

The project will be completed according to the project schedule attached as Attachment 5. The schedule will be subject to reasonable adjustments depending on availability of contractors, weather conditions, and other unforeseen circumstances.

TERMS AND CONDITIONS:

Refer to Attachment No. 4 for the terms and conditions that govern this AGREEMENT.

If this AGREEMENT is not executed within sixty (60) days of the date on Page 1, it may be subject to re-negotiation.

If this AGREEMENT is acceptable, please sign both copies and return one (1) executed copy to our office, to confirm our agreement. We are pleased to have the opportunity to be of service.

Respectfully,

**GREEN MOUNTAIN ENGINEERING, INC.**



Alan Huizenga, P.E.  
President

ACKNOWLEDGMENT

The Town of Middlebury, Vermont hereby acknowledges this to be an AGREEMENT and agrees to the conditions as stated. You are hereby directed to proceed with the Scope of Services.

The Town of Middlebury, Vermont hereby acknowledges that it has the financial resources and intends to pay for services rendered in accordance with the conditions as stated herein and acknowledges that if invoices are not paid in full within sixty (60) days of receipt, that the CONSULTANT will stop work until the invoices are paid.

The Town of Middlebury, Vermont warrants that the signature below represents the CLIENT'S AUTHORIZED REPRESENTATIVE and possesses the full legal authority to execute this AGREEMENT on behalf of CLIENT.

**TOWN OF MIDDLEBURY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Witness to Signature

Executed in Duplicate

TOWN OF MIDDLEBURY  
CADY ROAD CULVERT REPLACEMENT  
FINAL DESIGN, BID & CONSTRUCTION ENGINEERING  
PROFESSIONAL ENGINEERING SERVICES

ATTACHMENT NO. 1

PROJECT UNDERSTANDING

As discussed in the pre-proposal meeting on May 27, 2019, Green Mountain Engineering, Inc., proposes a project to include design and permitting services for the following improvements:

1. Removal and replacement of the existing 48-inch diameter corrugated metal culvert beneath Cady Road located approximately 0.39 miles west of Case Street (VT 116), and approximately 0.89 miles east of Route 7 South (US 7) with a new structure incorporating the latest manufacturing and construction technologies and materials. Temporary construction easements may be required from adjacent landowners and CONSULTANT is prepared to assist the CLIENT with this task.
  
2. A hydraulic study was performed (by others) and replacement options were provided as part of the study. During the pre-proposal meeting, the CLIENT and CONSULTANT expressed mutual interest in an Aluminum Structural Plate Arch Culvert as an alternative for design as this was included in the initial evaluation performed by others. For the purposes of this proposal, the Project Schedule and Engineering Cost Proposal are based on this approach; however, alternative designs may be considered, depending on subsurface information gathered during Final Design; specifically, depth to bedrock beneath the stream bed along the culvert footprint.

It is our experience that bedrock depth is a significant factor for determining the type of structure installation. Cost differences of select alternatives shall be evaluated during Final Design, based on subsurface investigation findings. It is our experience with projects similar to this that engineering and construction costs can be significantly different for a selected design alternative installation, based on bedrock depth. Our goal of design shall be to evaluate, select and design shall be to evaluate, select and design an alternative that shall strike a balance to minimize road closure, minimize project costs and maximize structure life expectancy.

END OF ATTACHMENT NO. 1

TOWN OF MIDDLEBURY  
CADY ROAD CULVERT REPLACEMENT  
FINAL DESIGN, BID & CONSTRUCTION ENGINEERING  
PROFESSIONAL ENGINEERING SERVICES

ATTACHMENT NO. 2

SCOPE OF SERVICES

The CONSULTANT will perform the following services as they relate to the Final Design, Bid and Construction Engineering Services of the proposed Cady Road Culvert Replacement in Middlebury, Vermont:

1. CONSULTANT will review existing reports, drawings and surveys of utilities within the project site.
2. CONSULTANT will review the recent Hydraulic Study of the site.
3. CONSULTANT will establish a semi-permanent control system for both horizontal and vertical control within the project area. The control system will include traverse points and temporary benchmarks. The control will be based on Vermont State Plane Coordinate System.
4. CONSULTANT will conduct topographical surveys of the project area up to and including fifty (50) linear feet beyond the Right-of-Way to establish the stream approach and departure conditions. The topographic survey of the project site will include existing street rights-of-way, utilities, driveways, corners of buildings, trees and shrubs. The topographic survey will be used to create a base map at a scale of 1-inch is equal to 20-feet (1"=20') with 1-foot contours. Identify current easements and any necessary easements.
5. CONSULTANT will prepare an estimate of the construction cost and timeframe for the project. Two (2) meetings with CLIENT staff are included in the project for pre-design and final design.
6. CONSULTANT will identify permits that will be required for the project. CONSULTANT anticipates that a Stream Alteration Permit, Vermont Wetlands Permit and an Army Corps of Engineers' VT General Permit will be required based on the project location, stream conditions and proximity to nearby mapped wetlands.
7. Using the information obtained in Items 1 through 6, CONSULTANT will prepare contract documents and construction plans for the proposed project.

The contract documents shall include an Advertisement for Bid, Information for Bidders, Bid Schedule, General Conditions, Special Conditions, and Technical Specifications for the project. Two (2) copies of the contract documents and contract drawings will be submitted to the CLIENT for their review. Upon completion of the CLIENT's review, comments will be addressed and incorporated into the contract documents and drawings. Submit a copy of the final construction plans to the CLIENT in PDF format (1"=50').

8. Prepare any necessary permit applications for the permits identified for the project. Any application fees will be paid directly by the CLIENT.
9. CONSULTANT will prepare an Advertisement for Bid and submit it to the CLIENT for distribution. During the bid phase, CONSULTANT will conduct a pre-bid meeting, answer questions posed by contractors, issue addenda, and attend the bid opening. **The Project's bid readiness will be difficult to determine as it relies heavily on acquisition of multiple permits and the associated effective "turn-around" time by the State of Vermont.** The Stream Alteration Permit typically has a time constraint for construction projects of this nature to be completely out of the Ordinary High-Water (OHW) elevation of the stream on or before October 1<sup>st</sup> of each year. CONSULTANT will prepare a bid tabulation and a letter of recommendation to the CLIENT. Upon acceptance of a contractor by the CLIENT, CONSULTANT will provide three (3) copies of conformed contract documents and drawings for agreement execution by the CLIENT and the successful contractor.
10. CONSULTANT will provide construction administration services during the construction of the proposed improvement. Construction administration will include:
  - a. Review of Shop Drawing Submittals
  - b. Review of Pay Requests
  - c. Issuing of Change Orders
  - d. Attendance at Contractor Meetings. We have estimated that only three (3) meetings are needed, including a kick-off meeting, one (1) progress meeting and final completion meeting, based on the size of this project.
11. CONSULTANT will provide Construction Review Services through completion of the Project. Construction review will include:
  - a. Full-time construction inspection for the portion of the work involved with pipe and manhole installation. We estimate that this portion of the work will take two (2) weeks. We have estimated eighty (80) hours for

full-time construction inspection. CONSULTANT will provide part-time construction inspection for general clean-up and other miscellaneous items. We have estimated fifteen (15) hours for this part-time construction inspection.

- b. Substantial and final completion walk-through.
  - c. Preparation of punch lists.
  - d. Contact with adjacent property owners.
12. CONSULTANT will prepare record drawings for the project based on information provided by the contractor. We will provide digital CADD plans and plans in PDF (or in GIS shapefile format, if better) for the CLIENT to insert in GIS mapping. We will submit three (3) paper copies of record drawings to the CLIENT,

The CONSULTANT is not responsible for the following services:

- 1. Archeological sub-contractor costs
- 2. Wetlands delineation and/or other sub-contractor costs associated with any permit acquisition.
- 3. Application fees or public notices.
- 4. Boundary survey.
- 5. Materials testing service fees.
- 6. Work required to prepare special or additional documents for project funding

END OF ATTACHMENT NO. 2

TOWN OF MIDDLEBURY  
CADY ROAD CULVERT REPLACEMENT  
FINAL DESIGN, BID & CONSTRUCTION ENGINEERING  
PROFESSIONAL ENGINEERING SERVICES

ATTACHMENT NO. 3

RATE SHEET

GME Project No. 29-007

June 04, 2019

PERSONNEL

Engineer I	\$125.00/hour
Engineer II	\$110.00/hour
Engineer III	\$ 85.00/hour
Technician I	\$ 85.00/hour
Technician II	\$ 75.00/hour
Administrative Assistant	\$ 55.00/hour
Survey Crew (2-man)	\$150.00/hour

REIMBURSABLE EXPENSES

The items below will be billed at cost:

Travel, Auto	@ \$0.58/mile
Lodging, Meals	@ Cost
Shipping, Postage, Messenger	@ Cost
Long Distance Telephone	@ Cost
Reproduction-Drawings, Reports, Specs	@ Cost
Other Direct Costs	@ Cost

SUBCONSULTANTS

Subconsultants shall be billed at cost plus 8% for administrative expenses.

END OF ATTACHMENT NO. 3



TOWN OF MIDDLEBURY  
CADY ROAD CULVERT REPLACEMENT  
FINAL DESIGN, BID & CONSTRUCTION ENGINEERING  
PROFESSIONAL ENGINEERING SERVICES

ATTACHMENT NO. 4

TERMS AND CONDITIONS

The terms and conditions set forth herein (these "Terms and Conditions") are hereby incorporated as Attachment No. 4 of the written agreement dated June 4, 2019 between Green Mountain Engineering, Inc. (herein after called "CONSULTANT") and the Town of Middlebury (herein after called "CLIENT"). GME Project No. 29-007.

1. PERFORMANCE OF SERVICES

The CONSULTANT agrees to perform the services as set forth in Attachment No. 2 (the "Services") subject to any Unexpected Contingency (as provided for herein). The Services shall not be changed without the written agreement of both the CONSULTANT and the CLIENT, except for changes to the Services as may be permitted, authorized, or contemplated by the AGREEMENT.

2. CLIENT'S AUTHORIZED REPRESENTATIVE

The CLIENT shall designate in writing a person to act as CLIENT'S representative regarding the services to be rendered under this AGREEMENT. Such person shall have authority to transmit instructions, receive information, interpret and define CLIENT'S policies and decisions regarding services for the Project. The CLIENT reserves the right to dismiss the Project Manager from this position at any time.

3. TERMINATION, SUSPENSION OR ABANDONMENT

- a. This AGREEMENT may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this AGREEMENT through no fault of the party initiating the termination. In case of termination under this provision, the party who failed substantially to perform shall be responsible for any losses, expenses, or damages incurred by the other party as a result of the failure or performance.
- b. CONSULTANT shall be compensated in full for services performed and expenses incurred prior to the date of termination, suspension, or abandonment, except that if CONSULTANT was the party who failed substantially to perform, any damages due under subparagraph (a) above shall be deducted from CONSULTANT'S compensation.

4. OWNERSHIP OF DOCUMENTS

The CLIENT acknowledges that the CONSULTANT's plans and specifications are instruments of professional service. Nevertheless, the plans and specifications prepared under this AGREEMENT shall become the property of the CLIENT upon completion of the work. Any reuse by the CLIENT without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CONSULTANT. The CLIENT agrees to hold harmless and indemnify the CONSULTANT against all damages, claims and losses, including defense costs, arising out of any reuse of the plans and specifications by the CLIENT without the written authorization of the CONSULTANT.

5. SCOPE OF OPINIONS

Unless otherwise specifically stated, any information, documents, records, data, interpretations, or opinions given to the CLIENT by the CONSULTANT in the course of the CONSULTANT's performance of the Services shall be for the CLIENT's sole use and benefit and only in connection with the specific project for which the CONSULTANT was engaged by the CLIENT, and the same is not intended to be used or relied upon by the CLIENT for any other purpose nor is it intended to benefit or be relied upon by any third party. Any such unintended use or reliance by the CLIENT or by a third party shall be at the CLIENT's or said third party's own risk. Further, any interpretation or opinion given by the CONSULTANT to the CLIENT shall be limited to the specific laws and/or regulations addressed in the AGREEMENT as the same may be further qualified by the interpretations or opinion in question.

6. BILLING AND PAYMENT

The CLIENT shall pay the CONSULTANT for services performed in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth herein. Invoices will be submitted by the CONSULTANT from time to time, but no more frequently than every two weeks, and shall be due and payable within thirty (30) calendar days of invoice date. CLIENT recognizes that payment is a material part of the consideration of this AGREEMENT. If the CLIENT objects to all or any portion of an invoice, the CLIENT shall so notify the CONSULTANT within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice, if any, not in dispute. Any invoices not objected to within such fourteen day period shall be deemed accepted by CLIENT.

The CLIENT shall pay an additional charge of one percent (1%) (or the maximum percentage allowed by law, whichever is lower), of the invoiced amount per month for any payment received by the CONSULTANT more than sixty (60) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment thereafter shall first be applied to accrued interest and then to the principal unpaid amount. Payment of invoices is in no case subject to unilateral discounting or setoffs by the CLIENT or OWNER.

If the CLIENT fails to pay undisputed invoice amounts within ninety (90) calendar days of the date of the invoice, the CONSULTANT may at any time, without waiving any other claim against the CLIENT and without thereby incurring any liability to the CLIENT, suspend or terminate this AGREEMENT (as provided for herein). In no event shall CONSULTANT be responsible for any liability or damage incurred by CLIENT or OWNER relating to CONSULTANT's suspension or termination of this AGREEMENT pursuant to this Section.

Payment will not be delayed by any conditions relating to purchase, sale or conveyance of Real Estate that may, directly or indirectly, be the subject of this AGREEMENT.

Application of the percentage rate indicated above as a consequence of the CLIENT's late payments does not constitute any willingness on the CONSULTANT's part to finance the CLIENT's operation, and no such willingness should be inferred. If the CLIENT fails to pay undisputed invoiced amounts within sixty (60) calendar days of the date of the invoice, the CONSULTANT may at any time, without waiving any other claim against the CLIENT and without thereby incurring any liability to the CLIENT, suspend or terminate this AGREEMENT (as provided for herein). In no event shall CONSULTANT be responsible for any liability or damage incurred by CLIENT or OWNER relating to CONSULTANT's suspension or termination of this AGREEMENT pursuant to this Section.

7. SALES TAX

The fee for this project does not include state or local sales tax. If any public authority levies a sales tax on any of the services to be provided by the CONSULTANT, the CLIENT hereby agrees to pay all such sales taxes invoiced to the CLIENT by the CONSULTANT within 30 days of the date of the CONSULTANT's invoice.

8. INSURANCE

The CONSULTANT shall agree to provide and maintain the following types and limits of insurance for the term of the AGREEMENT. This insurance shall be obtained from an insurer having an A.M. Best Insurance Rating of at least A- in a financial size category of VII or greater.

Commercial General Liability Insurance: Commercial General Liability Insurance including but not limited to Bodily Injury, Personal/Advertising Injury, Broad Form Property Damage, Products and Completed Operations Liability and Contractual Liability with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually.

Commercial Auto Liability Insurance: Commercial Auto Liability Insurance covering all Owned & Hired and Non-Owned vehicles, with limits of at least \$1,000,000 Combined Single Limit per occurrence.

Workers' Compensation and Employers Liability Insurance: Statutory Workers' Compensation Insurance and Employers Liability Insurance with limits of at least \$500,000 per occurrence.

Professional Liability Coverage: Professional Liability Insurance for \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually.

Before signing this AGREEMENT and before work begins, the CONSULTANT shall provide the CLIENT with one or more Certificate(s) of insurance showing evidence of all coverages requiring above and naming the "Town of Middlebury" as an Additional Insured. All Certificates shall contain a provision stating that the coverages afforded under said policies will not be cancelled, materially changed, or not renewed without thirty (30) days written prior notice to the municipality, except ten (10) days for non-payment of premium.

9. INDEMNIFICATION

The CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold the CONSULTANT harmless from any damage, liability, or cost (including reasonable attorneys' fees and cost of defense) to the extent caused by the CLIENT's negligent acts, errors, or omissions, and arising from the project that is the subject of this AGREEMENT.

The CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold the CLIENT harmless from any damage, liability, or cost (including reasonable attorney's fees and cost of defense) to the extent caused by the CONSULTANT's negligent acts, omissions, and arising from the project that is the subject of this AGREEMENT.

Neither party is obligated to indemnify the other party in any manner whatsoever for the first party's own negligence.

10. STANDARD OF CARE

The CONSULTANT shall exercise usual and customary professional efforts in performance of its services under this AGREEMENT and in complying with codes, regulations, and laws in effect as of the date of execution of this agreement.

11. COURT COSTS

In the event that either party fails to fulfill its obligations hereunder such party shall reimburse the other party for all its costs, including reasonable attorney fees, court costs, and interest associated with the enforcement of this AGREEMENT.

12. WARRANTY

The CONSULTANT warrants to the CLIENT that the CONSULTANT will exercise reasonable care, skill, competence, and judgment consistent with professional standards in performing the Services. In consideration of CONSULTANT's extension of this warranty to the CLIENT, the CLIENT agrees that THIS WARRANTY SHALL BE EXCLUSIVE OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED.

13. UNEXPECTED CONTINGENCIES

- a. If the CONSULTANT is unable to commence the Services within the time period set forth in the AGREEMENT (or, if no time period is set forth in the AGREEMENT, then within sixty (60) days from the date of the AGREEMENT) because of any Unexpected Contingency (as defined in subsection b. below), then the CONSULTANT shall have the right, at its option, either to terminate its obligations under this AGREEMENT or to renegotiate the terms and conditions set forth in this AGREEMENT. Further, if the CONSULTANT'S performance of any covenant, agreement, condition, or term of this AGREEMENT is prevented, delayed, made impossible, or otherwise interfered with by any Unexpected Contingency, then the CONSULTANT'S performance thereof shall be suspended during the continuance of such event and for a reasonable time thereafter, notwithstanding any provisions of this AGREEMENT to the contrary.
- b. For purposes of this AGREEMENT, an "Unexpected Contingency" shall mean:
  - (1) strikes, lockouts, riots, unavoidable accidents, acts of God or of the public enemy, or unavailability of transportation;
  - (2) any lawful order issued by the United States government or any other federal, state, or local governmental authority,
  - (3) any unforeseen or unexpected contingency the non-occurrence of which was expressly or implicitly assumed is the AGREEMENT, or
  - (4) any other cause beyond the CONSULTANT's reasonable control.

14. OPINIONS OF PROBABLE CONSTRUCTION COST

The CONSULTANT has no control over the cost of labor and materials nor over competitive bidding and market conditions and, therefore, does not guarantee the accuracy of the CONSULTANT'S Opinions of Probable Construction Cost as compared to contractor bids or actual cost to the CLIENT. If the CLIENT requires greater assurance as to probable Construction Cost or requires formal estimates, an independent cost estimator should be employed by the CLIENT.

15. DEFINITIONS

As used herein, the following words and their derivative words or phrases shall have the meaning indicated, unless otherwise specified in this AGREEMENT.

**CERTIFY, CERTIFICATION:** A statement of the CONSULTANT'S opinion, based on observation of conditions, to the best of the CONSULTANT'S professional knowledge, information and belief. Such statement of opinion does not constitute a warranty, either express or implied. It is understood that the CONSULTANT'S certification shall not relieve the CLIENT or the CLIENT'S contractors of any responsibility or obligation they may have by industry custom or under any contract.

**INSPECT, INSPECTION:** The visual observation of construction to permit the CONSULTANT, as an experienced and qualified professional, to determine that the Work, when completed by the contractor, generally conforms to the Contract Documents. In making such inspections, the CONSULTANT makes no guarantees for, and shall have no

authority or control over, the contractor's performance or failure to perform the Work in accordance with the Contract Documents. The CONSULTANT shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the contractor or for the contractor's safety precautions and programs nor for failure by the contractor to comply with any laws or regulations relating to the performance or furnishing of the Work by the contractor.

**RECORD DOCUMENTS:** Drawings prepared by the CONSULTANT upon the completion of construction based upon the drawings and other data furnished to the CONSULTANT by the Contractor and others showing significant changes in the Work made during construction. Because Record Drawings are prepared based on unverified information provided by others, the CONSULTANT makes no warranty of the accuracy or completeness of the drawings.

16. ADDITIONAL SERVICES FOR PERMIT ACQUISITION

By following acceptable design standards, and normal and customary standards of the CONSULTANT, we do not imply that the engineered product will meet all permit and Board approvals. It is understood by the CLIENT that at times additional efforts may need to be expended in order to obtain approvals even when all reasonable and customary procedures are followed during the engineering process and that CLIENT'S obligation to pay invoices is in no way related to obtaining permits or approvals.

17. BINDING EFFECT

This AGREEMENT shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal and legal representatives, successors, and assigns; provided, that neither of the parties hereto shall be entitled to assign any of said party's rights under this AGREEMENT without prior written consent of the other party hereto.

18. COOPERATION

The CLIENT agrees to cooperate fully with the CONSULTANT and its agents, representatives, and employees in the performance of the Services and to take any and all such actions as may reasonably be requested by the CONSULTANT in connection therewith.

19. INDEPENDENT CONTRACTOR STATUS

The CONSULTANT and CLIENT agree that the CONSULTANT is an independent contractor and not a partner, employee, or agent of the CLIENT for any purpose.

20. HAZARDOUS SUBSTANCES

It is understood and agreed that this contract does not involve the identification, handling, or disposal of hazardous waste as defined in 10 V.S.A., Section 6602(4), except for the identification of suspected hazardous wastes as noted below, nor does the

CONSULTANT hold itself out, for the purpose of this AGREEMENT, as being an expert in the identification, handling, or disposal of hazardous wastes. Should a substance be encountered by the CONSULTANT, while providing services subject to this AGREEMENT, that is suspected of being a hazardous waste, the CONSULTANT shall stop work in the area where the suspected hazardous waste is encountered. The CONSULTANT shall immediately notify the CLIENT and the Vermont Hazardous Materials Management Division (1-800-641-5005) of the substance encountered and shall take any actions directed by the Hazardous Materials Management Division to secure the site. Work may resume in the affected area only after the appropriate state authorities have determined that work associated with the AGREEMENT may proceed.

21. MISCELLANEOUS

- a. SEVERABILITY. If any term, condition, or provision of this AGREEMENT or the application thereof to any person or circumstance shall to any extent, be held invalid or unenforceable, then the remainder of this AGREEMENT or the application of such term, condition, or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall be valid and enforced to the fullest extent permitted by law.
- b. ENTIRE AGREEMENT. This AGREEMENT sets forth the entire AGREEMENT of the CONSULTANT and the CLIENT with respect to the subject matter hereof. The CONSULTANT and the CLIENT expressly represent to and agree with each other that there are no oral or written representations, warranties, covenants, promises, agreements, conditions, or understandings between them other than as set forth in this AGREEMENT.
- c. CONFLICTING PROVISIONS. In the event of any conflict between any of the terms, conditions, or provisions of this AGREEMENT and any of the terms, conditions, or provisions of the Proposal, the terms, conditions, and provisions of this AGREEMENT shall control unless otherwise specifically set forth in this AGREEMENT.
- d. MODIFICATION. This AGREEMENT shall not be modified or amended except in writing signed by both the CONSULTANT and the CLIENT.
- e. GOVERNING LAW. This AGREEMENT has been accepted and executed in accordance with, and shall be governed by and construed in accordance with, the laws of the State of Vermont.
- f. PROPOSAL. The Proposal is the Proposal letter and attachments submitted by the CONSULTANT on January 3, 2017.

END OF ATTACHMENT NO. 4

TOWN OF MIDDLEBURY  
CADY ROAD CULVERT REPLACEMENT  
FINAL DESIGN, BID & CONSTRUCTION ENGINEERING  
PROFESSIONAL ENGINEERING SERVICES

ATTACHMENT NO. 5

TENTATIVE PROJECT SCHEDULE

The following Project Schedule will result in a completed project that meets the needs of the Town of Middlebury. In addition, our goal throughout the project will be to maintain the satisfaction of the Town, the engineer, the contractor and the landowners and residents in the area.

<u>Project Milestone</u>	<u>Complete By:</u>
Contract Award - Assumed	June 25, 2019
Topographic Survey & Pre-design Meeting	July 5, 2019
Start Design	July 8, 2019
60% Review Meeting	July 26, 2019
Construction Cost Estimate/Timeframe	July 26, 2019
90% Review Meeting/Submit Final Draft	August 9, 2019
Town Review	August 12 - 16, 2019
Submit Final Stamped Plans and Permit Applications	August 16, 2019
Advertise for Bids	<b>August 26, 2019</b>
Pre-Bid Meeting	September 2, 2019
Bid Opening	September 12, 2019
Review Bids/Recommendation of Award	September 19, 2019
Start Construction	<b>September 24, 2019</b>
Complete Construction	October 24, 2019