

GREEN MOUNTAIN ENGINEERING, INC.

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

August 9, 2019

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

Re: Agreement for Professional Engineering Services
Dow Pond Area Waterline Replacement Final Design Engineering Services
GME Project No. 29-013

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 Dow Pond Area Waterline 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.

As currently anticipated, the project scope includes replacement of up to 1150 feet of 10-inch Asbestos Cement pipe from the existing chlorine contact building, north along State Route 116, to a point north of Dow Pond where the waterline transitions to cast iron pipe.

BASIS OF COMPENSATION

For services as outlined in Attachment No. 2, the CLIENT agrees to compensate the CONSULTANT as follows:

<u>Task Items</u>	<u>Manhours (if hourly basis)</u>	<u>Amount</u>	<u>Basis</u>
Items No. 1 - 4	97	\$9,600	Hourly
Item No. 5	16	\$1,500	Hourly

The total engineering fee for the Dow Pond Area Waterline Replacement Project is Eleven Thousand One Hundred Dollars (\$11,100.00).

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.

PROJECT SCHEDULE:

The project is to be coordinated with VTRANS and will be completed according to the project schedule attached as Attachment 4. 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
DOW POND AREA WATERLINE REPLACEMENT
FINAL DESIGN ENGINEERING
PROFESSIONAL ENGINEERING SERVICES

ATTACHMENT NO. 1

SCOPE OF SERVICES

The CONSULTANT will perform the following services as they relate to the Final Design Engineering Services of the proposed Dow Pond Area Waterline Replacement in Middlebury, Vermont:

1. CONSULTANT will review existing drawings and surveys of utilities within the project site and will establish a semi-permanent control system for both horizontal and vertical control within the project areas. The control system will include traverse points and temporary benchmarks. The control will be based on Vermont State Plane Coordinate System.

CONSULTANT will conduct topographical surveys of the project area to supplement that information provided by VTRANS up to and including the front face of existing buildings. 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.

2. CONSULTANT will identify permits that will be required for the project. We anticipate that a VT State Construction Permit will be required for waterline replacement.
3. CONSULTANT will prepare an estimate of the construction cost and timeframe for the project and coordinate deliverables with VTRANS. Two (2) meetings with CLIENT staff and VTRANS are included in the project, one (1) for pre-design and one (1) for final design.
4. Using the information obtained in Items 1 through 3, CONSULTANT will prepare contract specifications and construction plans for the proposed project. Two (2) copies of the contract specifications 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 specifications and drawings. Submit a copy of the final construction plans to the CLIENT in PDF format (1"=50').

5. Prepare any necessary permit applications for the permits identified for the project. Any application fees will be paid directly by the CLIENT. It is anticipated that a construction permit will be required from the Drinking Water and Groundwater Protection Division.

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. 1

TOWN OF MIDDLEBURY
DOW POND AREA WATERLINE REPLACEMENT
FINAL DESIGN ENGINEERING
PROFESSIONAL ENGINEERING SERVICES

ATTACHMENT NO. 2

RATE SHEET
GME Project No. 29-013
August 9, 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. 2

TOWN OF MIDDLEBURY
DOW POND AREA WATERLINE REPLACEMENT
FINAL DESIGN ENGINEERING
PROFESSIONAL ENGINEERING SERVICES

ATTACHMENT NO. 3

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 August 9, 2019 between Green Mountain Engineering, Inc. (herein after called "CONSULTANT") and the Town of Middlebury (herein after called "CLIENT"). GME Project No. 29-013.

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. 3

TOWN OF MIDDLEBURY
DOW POND AREA WATERLINE REPLACEMENT
FINAL DESIGN ENGINEERING
PROFESSIONAL ENGINEERING SERVICES

ATTACHMENT NO. 4

PROJECT SCHEDULE

The following Project Schedule will result in a completed project that meets the needs of the Town of Middlebury and VTRANS. 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	September 24, 2019
Pre-Design Meeting	October 4, 2019
Topographic Survey	October 11, 2019
Start Design	October 14, 2019
Construction Cost Estimate/Timeframe	November 1, 2019
90% Review Meeting/Preliminary Plans to VTRANS	November 29, 2019
Town Review	December 2019
Submit Final Stamped Plans/PTC Application	January 2020
Final Plans to VTRANS	May 2020