



25 Star Point Terrace, Middlebury, VT 05753 • 802-236-8324 • led-vt.com

April 3, 2023

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

Re: Agreement for Professional Engineering Services
Paving Project - Final Design, Bid Phase, & Construction Engineering Services
Leno Lane, Kings Row, Maecliff Court, and Lower Foote Street
LED Project No. 23008

Dear Kathleen;

This letter is written pursuant to your (CLIENT) request for Landmark Engineering & Design, LLC., (CONSULTANT) to provide professional Engineering services in accordance with a pre-proposal meeting on March 20, 2023 and outlined in the Scope of Work, included as Attachment No. 1. It is to be considered an AGREEMENT when executed and witnessed by a duly authorized agent of the CLIENT.

SCOPE OF SERVICES

Professional services are to be performed by the CONSULTANT as detailed in Section 1: Scope of Services in Attachment No. 1 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 Section 1: Scope of Services in Attachment No. 1, the CLIENT agrees to compensate the CONSULTANT as follows:

Items 1-8: A Lump Sum Fee of Eight Thousand Four Hundred Eighty-Five Dollars (\$8,485.00).

Item 9: An Hourly Fee of Ninety Dollars (\$90.00) per hour and One Hundred Ten Dollars (\$110.00) per hour per Section 3: Cost Proposal of Attachment No. 1 for an estimated two hundred eighty-one (281) full-time hours and zero (0) part-time hours totaling an estimated cost of Twenty-Five Thousand Three Hundred Ten Dollars (\$25,310.00) per Section 3: Cost Proposal of Attachment No. 1.

The total engineering fee for the Leno Lane, Kings Row, Maecliff Court, and Lower Foote Street Paving Project is Thirty-Three Thousand Eight Hundred Dollars (\$33,800.00).

Billing for each work item shall be percentage of completion as indicated below:

Lump Sum Services: Includes all engineering costs and direct expenses per Attachment No. 1. CLIENT shall be invoiced / billed throughout the project duration based upon percentage complete. The cost to the CLIENT will be limited to the lump sum fee indicated for each Lump Sum work item above.

Hourly: A Fee based on hours incurred in the interest of the Project, times the hourly rate listed

TERMS AND CONDITIONS:

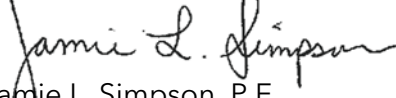
Refer to Attachment No. 2 for the terms and conditions that govern this AGREEMENT.

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


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,

LANDMARK ENGINEERING & DESIGN, LLC



Jamie L. Simpson, P.E.
Principal



Elias J. Erwin, LD
Principal

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 they have the financial resources and intend to pay for services rendered in accordance with the conditions as stated herein and acknowledge that invoices will be paid in full within thirty (30) days of billing.

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

1. Scope of Services

The following technical approach is presented to address the Scope of Services obtained from the pre-proposal meeting on March 20, 2023.

1. Landmark Engineering & Design, LLC. (LED) will review existing maps and information provided by the Town, as well as any available existing drawings and surveys of utilities within the project site.
2. LED will provide final design services related to the proposed turnaround located at the end of Kings Row. The proposed turnaround will extend to the limits of the existing Right of Way. Additionally, LED will provide final site plan design.
3. LED will prepare an estimate of the construction cost and timeframe for the project. One (1) meeting with Town staff is included in the project for pre-design.
4. LED will identify permits that will be required for the project. LED anticipates that no State Highway Access and Work Permit (Section 1111) from Vermont Agency of Transportation will be required as work is to remain outside of the Right of Way for State Highways VT7, VT116, & VT125.
5. Using the information obtained in Items 1 through 4, LED will prepare contract documents and general construction plans (limits of work) for the proposed replacement pavement 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 Town for review. Upon completion of the Town's review, comments will be addressed and incorporated into the contract documents and drawings. A copy of the final construction documents shall be submitted to the Town in PDF format with plans at a scale of 1" = 400'.

6. LED shall prepare any necessary permit applications for the permits required for the project. Any application fees will be paid directly by the Town. As stated in Item 4, LED anticipates that a State Highway Access and Work Permit from the State of Vermont will not be required.

7. LED will prepare an Advertisement for Bid and submit it to the Town for distribution. During the bid phase, LED will conduct a pre-bid meeting, answer questions posed by contractors, issue addenda, and attend the bid opening. The Project will be ready to bid at a date to be determined by the Town in 2023. Upon receipt of Contractor Bids, LED will prepare a bid tabulation and a letter of recommendation to the Town. Upon acceptance of a contractor by the Town, LED will provide two (2) copies of conformed contract documents and drawings for agreement execution by the Town and the successful contractor.

8. LED will provide construction administration services during the construction of the proposed improvements. Construction administration will include:
 - a. Management of the project in accordance with the guidance set forth by the Municipal Highway Structures Grant Program (if applicable);
 - b. Review of Shop Drawing Submittals;
 - c. Review of Pay Requests;
 - d. Issuing of Change Orders; and
 - e. Attendance at Contractor Meetings. We have estimated that only two (2) meetings are needed, including a kick-off meeting and a final completion meeting, based on the size and scope of this project.

9. LED will provide Construction Review Services through completion of the Project. Construction review will include:
 - a. Full-time construction inspection for the portion of work involved with the full-depth reclamation, mill and overlay, shim and overlay, and road surface/apron reconstruction. We estimate that this portion of work will require twenty-eight (28) workdays in total, equivalent to two hundred eighty (280) hours for full-time construction inspection and one (1) hour of Professional Engineering.

- b. LED can provide part-time construction inspection to verify satisfactory completion of testing requirements for the project and for general clean-up and other miscellaneous items, if necessary, though zero (0) hours are included at this time.
- c. Substantial and final completion walk-through.
- d. Preparation of punch lists.
- e. Contact with adjacent property owners.

2. 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 shall be to maintain the satisfaction of the Town, the engineer, the contractor and landowners and residents in the area.

<u>Project Milestone</u>	<u>Complete by:</u>
Contract Award - Assumed	April 6, 2023
Construction Cost Estimate/Timeframe	April 7, 2023
Town Review of Contract Documents	April 12, 2023
Submit Final Contract Documents	April 14, 2023
Advertise for Bids	April 17, 2023
Pre-Bid Meeting	TBD
Bid Opening	TBD
Review Bids/Recommendation of Award	TBD
Start Construction	TBD
Complete Construction	Prior to October 2023

3. Cost Proposal

The following is our Cost Proposal for the engineering services for this proposed project in accordance with the Rate Sheet provided in the 2022 LED Statement of Qualifications (SOQ).

<u>Task Items</u>	<u>Manhours</u>	<u>Amount</u>	<u>Basis</u>
Items No. 1 - 8	N/A	\$8,485	Lump Sum
Item No. 9	280 Full-Time @ \$90/hr. 1 Full-Time @ \$110/hr. <u>0 Part-Time @ \$90/hr.</u> 281 Total	\$25,310	Hourly
Total		<u>\$33,800.00</u>	

Terms and Conditions

PERFORMANCE OF SERVICES: The CONSULTANT shall perform the Services as outlined on Page 1 in consideration of the stated fee and payment terms. 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.

CLIENT'S AUTHORIZED REPRESENTATIVE: The CLIENT shall designate, by signing, that he/she will act as CLIENT'S authorized representative regarding the services to be rendered under this AGREEMENT. He/she shall have authority to transmit instructions, receive information, interpret and define CLIENT'S policies and decisions regarding services for the Project.

TERMINATION, SUSPENSION OR ABANDONMENT: 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. CONSULTANT shall be compensated in full for services performed and expenses incurred prior to the date of termination, suspension, or abandonment.

OWNERSHIP OF DOCUMENTS: Plans, specifications, designs and reports prepared under this AGREEMENT by the CONSULTANT as instruments of service, are and shall remain the CONSULTANT's property, whether the project for which they are made is executed or not. The CLIENT shall be permitted to retain copies, including reproducible copies of plans, specifications, designs and reports, in connection with the use and occupancy of the specific project. The plans, specifications, designs and reports shall not be used by the CLIENT on other projects, for additions to this project, or for completion of this project by others except by agreement in writing and, provided the CONSULTANT is not in default under this AGREEMENT, without appropriate compensation to the CONSULTANT.

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.

RETAINER / BILLING / PAYMENT: The CLIENT agrees to pay the CONSULTANT for all services performed and all costs incurred. The CLIENT shall pay the CONSULTANT for services performed, in U.S. funds drawn upon U.S. banks within thirty (30) calendar days of invoice date. 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 thirty (30) 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.

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 these Terms and Conditions.

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 those of its contractors, sub-contractors, or consultants or anyone for whom the CLIENT is legally liable, 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 that party's negligence.

DAMAGES: The CLIENT agrees that CONSULTANT's sole liability for any breach of its warranty (as provided for herein), or as the result of any cause or causes of action in any way related to the Services and arising in contract, tort, strict liability, or otherwise, shall, in the aggregate, be limited to the obligation to pay the CLIENT an amount equal to the greater of: \$250.00, or the total amount theretofore paid by the CLIENT to CONSULTANT for the Services.

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.

COURT COSTS: In the event that CLIENT fails to fulfill its obligations hereunder CLIENT shall reimburse CONSULTANT for all its costs, including reasonable attorney fees, court costs, and interest associated with the enforcement of this AGREEMENT.

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.

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.

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.

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.

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.

Initialed: _____ (CONSULTANT) _____ (CLIENT)