



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

October 10, 2023

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

Re: Agreement for Professional Engineering Services
South Street Phase V Sewer & Stormwater Replacement Project
Final Design, Bid Phase & Construction Phase Engineering Services
LED Project No. 23024

Dear Kathleen;

This letter is written pursuant to your (CLIENT) request for Landmark Engineering & Design, LLC., (CONSULTANT) to provide professional Engineering services as outlined in the Work Proposal dated October 10, 2023, 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

The CONSULTANT will perform final design services, bid phase services, construction administration and construction oversight for the following project as described in Attachment No. 1, Section 1: Project Understanding. Professional services are to be performed by the CONSULTANT as detailed in Section 2: 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 2: Scope of Services in Attachment No. 1, the CLIENT agrees to compensate the CONSULTANT as follows:

Items 1-9 and 11: A Lump Sum Fee of Thirty-four Thousand, Five Hundred Twenty Dollars (\$34,520.00) per Section 4: Cost Proposal of Attachment No. 1.

Item 10: An Hourly Fee of Ninety Dollars (\$90.00) per hour with an estimated one thousand six hundred fifty (1,650) hours of full-time and twelve (12) hours of part-time construction oversight equating to an estimated cost of One Hundred Forty-Nine Thousand Five Hundred Eighty Dollars (\$149,580.00) plus Reimbursable Expenses per Section 4: Cost Proposal of Attachment No. 1.

The total engineering fee for the South Street Phase V Sewer & Stormwater Replacement Project is One Hundred Eighty-Four Thousand Eight Hundred Dollars (\$184,800.00).

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, multiplied by the hourly rate listed.

TERMS AND CONDITIONS:

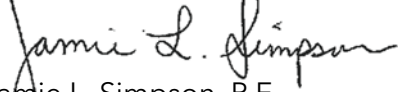
Refer to Attachment No. 2 for the terms and conditions that govern this AGREEMENT.

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

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



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October 10, 2023

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

RE: Proposal for South Street Sewer & Stormwater Replacement Project
Final Design, Bid Phase & Construction Phase Engineering Services
Middlebury, VT 05753
LED Project No. 23024

Dear Kathleen;

Landmark Engineering & Design, LLC. (LED) would like to thank you, Emmalee Cherington, and Bill Kernan of the Public Works Department, for the opportunity to provide engineering services for the Town of Middlebury. Attached is our Project Understanding, Scope of Services, Project Schedule, and Cost Proposal for the above-referenced project.

This project includes providing a limited scope of Final Design with complete Bid Phase and Construction Phase engineering services for the South Street Sewer & Stormwater Replacement Project including installation of new sewer main, new building sewer service lines to the right-of-way, new sewer manholes, new HDPE stormwater mains, new catch basin structures, yard drains, new concrete curb, new concrete sidewalk, new bioretention gardens, curb extensions (bump-outs) and paving of the South Street roadway surface, located in Middlebury, VT. It is imperative that South Street remain open to through-traffic at all times while under construction due to the necessary access to and from Porter Hospital and the Middlebury Regional Emergency Medical Services (MREMS) units.

The major tasks associated with this project include incorporation of newly acquired data and information, preparation of Contract Documents, project advertising & bidding assistance, construction administration and full-time construction oversight of the project. As LED staff includes the design engineer involved with greater than 85% of the original and subsequent project's Final Design and Construction Phases; we have the knowledge and expertise to effectively assist the Town of Middlebury and provide essential engineering services in a timely, efficient, and cost-effective manner.

Thank you again for the opportunity to submit this proposal. We look forward to your response.

Respectfully,

LANDMARK ENGINEERING & DESIGN, LLC.

Jamie L. Simpson, P.E.
Principal Engineer
Enc.

1. Project Understanding

As discussed in a pre-proposal meeting with Emmalee Cherington, Landmark Engineering & Design, LLC. (LED) proposes a project scope of work to include Final Design, Bid Phase & Construction Phase Engineering Services for the following improvements:

1. Construction of approximately 1,150 linear feet (LF) of 12-inch diameter sewer main, approximately 1,100 LF of new 8-inch diameter sewer main, approximately 1,095 LF of new 6-inch diameter residential sewer services, replacement of several existing underground sewer manhole structures, and tie-in of the existing 6-inch HDPE sewer force main into a new underground gravity sewer manhole structure as shown on the site plans.
2. Construction of approximately 250 LF of 30-inch diameter HDPE, 86 LF of new 24-inch diameter HDPE, 570 LF of 18-inch diameter HDPE, 245 LF of 15-inch diameter HDPE, 200 LF of 12-inch HDPE stormwater mains, installation of approximately 400 LF of 6-inch & 8-inch diameter stormwater stub connections, installation of 20 new underground stormwater structures, and tie-in of the new stormwater collection system into a new underground storm drain manhole structure adjacent to South Main Street as shown on the site plans.
3. Abandonment and capping of existing underground sewer & stormwater mains and sewer service lines.
4. Removal and replacement of existing concrete sidewalk, installation of truncated dome detectable warning plates, removal and replacement of concrete and asphalt curbing with new concrete curb. Design & construction of new curb extensions (i.e., bump-outs) to aid in traffic calming on South Street.
5. Design and installation of new bioretention areas along South Street to improve water quality, increase pollutant removal from stormwater runoff, and improve overall streetscape aesthetics.

6. Full-width paving of the disturbed and existing paved surfaces on South Street. Full-width paving shall occur upon completion of the sanitary sewer and storm sewer construction project, scheduled for the 2024-2025 construction seasons. Trenches excavated within the existing road surface shall be backfilled with well-sorted gravel, compacted, and graded to match existing subgrade elevations of South Street. It is understood that at a minimum, one-lane of traffic shall be kept open at all times during construction on South Street to maintain access for Porter Hospital, MREMS, Eastview Condominiums and local residents.

2. Scope of Services

The following technical approach is presented to address the Scope of Services understood from the pre-proposal meeting with Emmalee Cherington.

1. Landmark Engineering & Design, LLC. (LED) will review existing & proposed maps and drawings provided by the Town, as well as any other available existing drawings, surveys and permits related to the project site.
2. LED shall review, evaluate and design streetscape and traffic-calming alternatives that may be installed during this phase of construction.
3. LED shall recover previously established onsite survey control and establish new horizontal and vertical onsite survey control (to accommodate for that which may have been lost during previous construction projects) to facilitate construction of the proposed design.
4. LED shall perform a brief topographical survey of features and elevations along the South Street roadway (and specifically at side-road intersections) to aid in the design of new traffic calming and stormwater infrastructure.
5. An Opinion of Probable Construction Cost Estimate shall be provided to the Town to determine if the project scope requires modification or adjustment. In addition to the estimated construction costs, a project timeframe shall also be provided to assist with scheduling and determining the project construction duration.
6. LED shall discuss and confirm locations of bioretention areas as well as curb extensions to determine the most suitable and effective placement for this infrastructure. LED shall design and incorporate these components into the site plans for construction.
7. LED will prepare and provide Contract Documents and Drawings to present to Contractors for bidding. Existing data and information previously gathered shall be transformed to State Plane Coordinates, and plans shall reflect updated existing conditions. Two (2) copies of Contract Documents shall be provided upon final approval.

8. LED shall provide Bid Phase Engineering Services to assist the Town with the Bidding and Contract Award process. An advertisement for bids will be prepared and provided to the Town for distribution to advertising agencies of their choosing. A pre-bid meeting shall be conducted to allow Contractors an opportunity to ask questions of the Town and the Engineer for bid clarifications. If necessary, LED shall prepare and issue any Addenda during the bid period to help clarify Contractor bidding requirements. LED shall conduct a public Bid Opening to announce the apparent low-bidder. A Bid Tabulation and Letter of Recommendation shall be prepared and provided to the Town to assist with selecting a Contractor for construction of the project.
9. LED will provide Construction Administration services during the construction of the proposed improvements. 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 ten (10) meetings are needed, including a kick-off meeting, eight (8) progress meetings and a final completion meeting, based on the size of this project.
10. LED 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 installations of pipe, underground structures, yard drains, curb removal & installation, sidewalk removal & installation, subgrade preparation and paving. We estimate that this scope of work will take thirty-seven (37) weeks. We have estimated one thousand, six hundred fifty (1,650) hours for full-time construction inspection. LED will provide part-time construction inspection for general clean-up and other miscellaneous items. We have estimated twelve (12) 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.

11. LED will prepare record drawings for the project based on our measured and observed information as well as information provided by the contractor. Digital CADD plans and plans in PDF (or in shapefile .shp format, if preferred) shall be provided to the Town of Middlebury to insert into GIS mapping. In addition, LED will submit one (1) paper copy of record drawings to the Town for their records.

LED is not responsible for the following:

1. Incorrect or erroneous information provided by others.
2. Materials testing service fees.
3. Public Notices.
4. Workers' Safety & Jobsite Responsibilities.
5. Site conditions throughout the duration of construction.

3. *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> |
|---|----------------------------|
| Executed Agreement | October 10, 2023 |
| Perform Additional Topographic Survey/Control | November 17, 2023 |
| Final Design Review of Bioretention & Bump-outs | December 22, 2023 |
| Complete Final Design | January 05, 2024 |
| Provide Final Contract Documents & Drawings | January 08, 2024 |
| Advertise for Bids (4 week period) | January 11, 2024 |
| Bid Opening | February 12, 2024 |
| Review Bids/Recommendation of Award | February 16, 2024 |
| Contract Award | March 26, 2024 |
| Start Construction (winter shutdown 11/15/24) | April 29, 2024 |
| Complete Construction | June 24, 2025 |
| Provide Record Drawings | July 25, 2025 |

4. Cost Proposal

The following is our Cost Proposal for engineering services for this proposed project:

| <u>Task Items</u> | <u>Manhours</u> | <u>Amount</u> | <u>Basis</u> |
|--------------------------|---|----------------------------|---------------------|
| Item No.1 - 9 and 11 | N/A | \$34,520 | Lump Sum |
| Item No. 10 | 1,650 Full-Time @ \$90/hr. <u>12 Part-Time @ \$90/hr.</u> 1,662 Total | \$149,580 | Hourly |
| | Reimbursable Expenses | \$700 | Mileage |
| Total: | | <u>\$184,800.00</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)