



July 24, 2023

Town of Middlebury
 c/o Kathleen Ramsay, Town Manager
 77 Main Street
 Middlebury, VT 05753

Subject: Exchange Street Sidewalk Design, Middlebury, VT
 23-158 Services Agreement

Dear Kathleen:

This is a Services Agreement to provide professional services for continued work on Middlebury STP BP 13(11) & STP BP 15(8) Exchange Street, Middlebury, VT.

We will rely on you to furnish us with full information as to your requirements including any special or extraordinary considerations for the Project or special services needed, and also to make available pertinent existing data. Any information you give us before we start will be helpful.

Based on our current understanding of the Project, we will provide services identified in the attached Scope of Work. The fixed fee for these services will be as outlined in the table below:

Phase	Fixed Fee
Preliminary Plans	Complete
Finalize Right-of-Way Plans	\$ 500
Final/Contract Plans	\$ 3,500
Construction Bid Package	\$ 2,500
Bid Process	\$ 2,500
Total	\$ 9,000

Progress billing will be done monthly based on the percent of work completed in each of the above phases and in accordance with our attached Reimbursable Schedule. If additional services are requested beyond the Scope of Work, we will provide you with an Additional Services Authorization for approval. The attachments listed herein are part of this Services Agreement.

Unless changed by us in writing, this proposal will be open for acceptance until August 24, 2023. To authorize us to begin work, please sign and return this Agreement. Once we have received the executed Agreement we will schedule the work. We have denoted the Project as number 23-158.

Page 2 of 2
Town of Middlebury-Exchange St.
Project #23-158
July 24, 2023

PROTECTION OF SUCCESSOR CONSULTANT

In consideration of the risks and rewards involved in this Project, the Client agrees, to the maximum extent permitted by law, to indemnify and hold harmless the Consultant from any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising or allegedly arising from any negligent acts, errors or omissions by any prior consultant employed by the Client on this project and from any claims of copyright or patent infringement by the Consultant arising from the use or reuse of any documents prepared or provided by the Client or any prior consultant of the Client. The Client warrants that any documents provided to the Consultant by the Client or by the prior consultant may be relied upon as to their accuracy and completeness without independent investigation by the successor Consultant and that the Client has the right to provide such documents to the successor Consultant free of any claims of copyright or patent infringement or violation of any other party's rights in intellectual property.

Should you have any questions, please do not hesitate to contact me directly. Thank you for the opportunity to be involved with this project and we look forward to working with you.

Sincerely,

Abby Dery
Abby Dery, PE
Director of Project Management

Jennifer A. Desautels 7/24/2023

For TCE, Inc. Date

For Town of Middlebury Date

Attachments:

- A. Scope of Work
- B. Hourly Rate Schedule
- C. Reimbursable Schedule
- D. Payment Terms
- E. Standard Terms and Conditions

Accepted and Authorized to Proceed. By signing the Client acknowledges reading and accepting this Services Agreement and all attachments.

TCE invoices via email. Email address bills will be sent to (Client to fill-in):

If you would like to opt out of email invoices: Invoice by mail ONLY



Attachment A
 Scope of Work
 Town of Middlebury-Exchange St.
 Project #23-158
 July 24, 2023

Project Goal:

The project consists of continued work on Middlebury STP BP 13(11) & STP BP 15(8). TCE will provide professional services limited to the scope of work below.

General Project Tasks:

The following outlines the general tasks that we expect to perform:

1. Final Plans –
 Final Plans will include all of the plan sheets previously prepared as Preliminary Plans plus the approved ROW Plans. The Final Plans will be updated to incorporate comments and changes resulting from the right-of-way and utility negotiations.
2. Contract Plans and Bid Package –
 TCE will revise the Final Plans, prepare bid documents for the project. The revised plans and documents will become the Contract Plans. Final bid documents will include final utility relocations, clearances, engineer's design certification, special provisions, all necessary permits, and the required bid forms, instructions and attachments. TCE will submit the Contract Plans and Bid Documents to the Town for distribution to bidders.
3. Bid Phase Technical Assistance –
 TCE will coordinate and attend a pre-bid meeting, and address written comments during the bidding phase. These will be done in writing and distributed via an addendum. It is assumed one (1) addendum during the bid phase will be required. Following the bid opening, we will review the received bids for responsiveness and accuracy. We will also analyze the bids for accuracy, reasonableness, and whether the apparent low bid is unbalanced. The results of the bid review will include a bid tabulation (spreadsheet format), plus a letter that outlines our conclusions relative to the apparent low bid and provides a recommendation for awarding the contract.

Note: The design and permitting of this Project was previously initiated by Lamoureux & Dickinson. TCE accepts no liability associated with engineering, surveying, environmental design or permitting approvals obtained prior to the date of this contract. The purpose of this contract and scope of services is to outline TCE's involvement with the engineering design of this Project only.

EXCLUSIONS

1. Permit Application Fees
2. State or Local Permitting
3. Recording of Permits and Certifications in Land Records and Filing Fees
4. Construction observations, inspections, or certifications
5. Backhoe, Excavator and/or Boring Equipment Rental Fees
6. Geotechnical, Architectural, Mechanical, Electrical, or Structural Design Services
7. Revisions after initial design is complete due to changes requested by the applicant, regulatory bodies, or unforeseen conditions.
8. Design of Non-Civil or Off-Site Utilities (power, propane, natural gas, telephone/cable)
9. Additional Site Visits and Meetings beyond what is included herein
10. State, Federal, or Local Permitting not identified in Scope of Work above, unless requested as Additional Services.

The above is a partial list; we will do our best to notify you if conditions arise that necessitate services beyond the defined Scope of Services.



Attachment B: Hourly Fee Schedule

January 1, 2023 – December 31, 2023

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Principal / Engineer – VII	\$185/hour
Senior Project Manager / Engineer – VI	\$170/hour
Engineer – V / Environmental Engineer – V	\$150/hour
Engineer – IV / Environmental Engineer – IV	\$135/hour
Engineer – III / Environmental Engineer – III	\$120/hour
Engineer – II / Environmental Engineer – II	\$110/hour
Engineer – I / Environmental Engineer – I	\$100/hour
Senior Environmental Planner	\$150/hour
Senior Landscape Architect	\$150/hour
Senior Ecologist	\$150/hour
Landscape Designer	\$110/hour
Staff Ecologist – IV	\$110/hour
Staff Ecologist	\$85/hour
Senior Surveyor – V	\$165/hour
Land Surveyor/Technician - IV	\$150/hour
Land Surveyor/Technician – III	\$115/hour
Land Surveyor/Technician – II	\$105/hour
Land Surveyor/Technician – I	\$95/hour
CAD Designer	\$90/hour
Project Administrator	\$85/hour
Technician	\$75/hour
Administrative Support	\$65/hour
Expert Witness	\$280/hour
Drone Work	\$200/hour
One-man Survey Crew with RTK or Robotic	\$175/hour
<u>Two- Person Survey Field Crew Rates</u>	
- Topographic	\$160/hour
- Boundary	\$170/hour
- Construction	\$185/hour
- With RTK	\$225/hour
Three Person Survey Field Crew Rate	\$265/hour
Two Person Environmental Field Crew	\$190/hour

- o A 1% per month finance charge will be added to invoices over 30 days past due.
- o A 15% increase in the normal hourly rates above shall apply to any overtime work performed on holidays, weekends, work performed over 8 hours per day, or over 40 hours per week.
- o Hourly Rates and Reimbursables are subject to change at the beginning of each year.
- o Discounted crew rates apply to fieldwork only, office work performed at normal rate.

Attachment C: Reimbursable Schedule

January 1, 2023 – December 31, 2023

<u>Description</u>	<u>Price</u>
Plots	\$5.14 (18 x 24)/each \$7.84 (24 x 36)/each
Color Plots	\$16.22 (18 x 24)/each \$28.12 (24 x 36)/each
Ortho Photos	\$51.92/each
Mylars	\$43.26/each
Scan – Large Format	\$12.98/each
Copies (8 ½ x 11)	\$0.41/each
Copies (11 x 17)	\$0.92/each
Color Copies (8 ½ x 11)	\$0.92/each
Color Copies (11 x 17)	\$1.73/each
CD / DVD	\$12.98/each
Stakes	\$1.78/each
Hubs/ Control Points	\$1.79/each
Iron Pins	\$24.88/each
Concrete Monument	\$64.90/each
Travel	@ Standard Mileage Rate
Postage	At Cost
Research Fee/ Close Out	\$150.00
Meals & Lodging	Cost + 10%
Turbidity Meter	\$65/day
Grain Size Distribution Test	\$80/each
All-Terrain Vehicle	\$250/day or \$600/week
Hydrant Flow Equipment	\$110/day
Infiltration Test / Guelph Perm.	\$250/day

An 10% handling charge will be added to any reimbursable purchased from outside sources or independent subcontractors.

* All rates subject to change at the beginning of each year.

Attachment D: Payment Terms

Billing & Payment

The work to be performed under this Agreement are based on prompt payment of invoices and the orderly and continuous progress of the Project, and are subject to Vermont's Prompt Pay Law (9 V.S.A.102 §4000 et. seq.). We will bill you bi-monthly and/or at the completion of the Project for Services and Reimbursable Expenses. Payment is due within thirty (30) days of the date of the invoice.

Retainers: You will be responsible for prompt payment of any balance that the retainer may not cover when applied to the final invoice. Any remaining credit will be returned to you promptly after Project completion.

Past Due Accounts

If you fail to make payment within thirty (30) days of the date of our invoice, it will be considered past due and the amount due will include additional finance charges at the rate of one percent (1%) per month, compounded monthly, from the thirtieth day. If after 30 days we have not received payment, we shall have the right to stop work immediately and withhold deliverables (e.g. plans, certifications, recordable mylar, or other work product) without consequential damage claims against us.

Accounts ≥60 Days Overdue

For payments not received with sixty (60) days of the invoice date, TCE may consider the account delinquent and submit the account to an attorney or other agency for collection and, without waiving any other claim or right to such unpaid balance, and without liability whatsoever to TCE, suspend services without notice until the balance due, accrued late payment service charge, cost of collection and attorney fees are paid in full. Payment received on overdue accounts shall first be applied to late payments service charges outstanding and due and thereafter to any balance due.

Approval of TCE's Services

Services provided by TCE shall be deemed approved and accepted by the Client upon receipt of invoice unless Client objects within thirty (30) days of the invoice date by written notice specifically stating the details in which the Client believes such services are incomplete or defective.

Final Payment

TCE reserves the right to hold final certifications and recordable mylar and other final products until final payment is received.

Attachment E: Standard Terms and Conditions of Service Agreement with TCE, Inc. dba Trudell Consulting Engineers (TCE)

Preamble The Agreement is based upon a mutual obligation of good faith and fair dealing between the parties in its performance and enforcement. Accordingly, the Client and TCE, Inc. dba Trudell Consulting Engineers its officers, partners and employees and their heirs and assigns (collectively, TCE), with a positive commitment to honesty and integrity, agree to the following:

Governing Law Unless otherwise specified, this agreement shall be governed by the laws of the State of Vermont, in effect as of the date of this contract.

Definitions The following definitions shall be used in any interpretation of the work provided by TCE:

CERTIFY, CERTIFICATION: TCE's opinion based on its observation of conditions, knowledge, information and beliefs. Such statement of opinion does not constitute a warranty, either express or implied. It is expressly understood that TCE's certification of a condition's existence relieves no other party of any responsibility or obligation he or she accepted by contract or custom.

OPINION OF PROBABLE COST, ESTIMATE: An opinion of probable cost made by TCE. Such opinion is based on TCE's judgment and experience and does not constitute a warranty, expressed or implied, that the price of the work will not vary from the opinion.

INSPECT, INSPECTION: The visual observation of construction to permit TCE to render their professional opinion as to whether the contractor is performing the Work in a manner indicating that, when completed, the Work will be in accordance with the Contract Documents. Such observations shall not be relied upon by any party as acceptance of the Work, nor shall they relieve any party from fulfillment of customary and contractual responsibilities and obligations.

Public Responsibility Both the Client and TCE owe a duty of care to the public that requires them to conform to applicable codes, standards, regulations and ordinances, principally to protect the public health and safety. The Client shall make no request of the TCE that, in TCE's reasonable opinion, would be contrary to the TCE's professional responsibilities to protect the public. The Client shall take all actions and render all reports required of the Client in a timely manner. Should the Client fail to take any required actions or render any required notices to appropriate public authorities in a timely manner, the Client agrees TCE has the right to exercise its professional judgment in reporting to appropriate public officials or taking other necessary action. The Client agrees to take no action against or attempt to hold TCE liable in any way for carrying out what the TCE reasonably believes to be its public responsibility.

The Client agrees TCE shall not be held liable in any respect for reporting said conditions. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless TCE, its officers, directors, employees and subconsultants (collectively, TCE) against all damages, liabilities or costs arising out of or in any way connected with the TCE's notifying or failing to notify appropriate public officials.

Dispute Resolution In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, all disputes arising out of or related to this Services Agreement will be submitted first to non-binding mediation, unless the parties mutually agree otherwise.

Limitation of Liability In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims (including claims by third parties), losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$25,000, or the Consultant's total fee for services rendered on this Project, whichever is greater (the "Limitation Amount"), and further, in no event shall the Limitation Amount exceed the amount of insurance proceeds actually available to the Consultant for the claim at issue at the time of settlement or final judgment net of any and all expenses paid or incurred on the claim at issue, payments made or incurred in connection with other claims made against the Consultant, or any other circumstances which may reduce, impair, or eliminate the overall availability of such insurance to the Consultant. It is intended that this limitation apply to any and all liability or cause of action, including without limitation active and passive negligence, however alleged or arising, unless otherwise prohibited by law. The Client specifically agrees that it has had the opportunity to negotiate this Limitation of Liability clause and to accept or reject its inclusion herein.

Professional Liability In recognition of the relative risks and benefits of the Project, the risks have been allocated such that our professional liability arising from any negligent acts, errors, or omissions on the Project, in the aggregate, shall not exceed twenty-five thousand dollars (\$25,000) or two times (2x) our total fee for services rendered on this Project whichever is greater.

Betterment If, due to TCE's error, any required item or component of the project is omitted from TCE's construction documents, TCE shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will TCE be responsible for any costs or expense that provides betterment, upgrade or enhancement of the project.

Ownership Of Documents All documents including calculations, computer files, drawings, and specifications prepared by TCE pursuant to this Agreement are instruments of professional service intended for the one-time use in construction of this project. They are and shall remain the property of TCE. Any reuse or adaptation without written approval by TCE is prohibited.

Changed Conditions If circumstances or conditions that were not originally contemplated by or known to TCE are revealed, TCE may call for contract re-negotiation. TCE shall identify the changed conditions necessitating the re-negotiation and TCE and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.

Regulations, Codes and Standards Compliance The Client acknowledges there may be severe environmental and/or site limitations as well as municipal planning and zoning considerations that may restrict or prohibit the development of the project. TCE shall exercise usual and customary professional care in its efforts to comply with codes, standards, regulations, and ordinances in effect as of the date of this Agreement, including, but not limited to: zoning bylaws, Americans with Disabilities Act (ADA), and other state and local permit requirements. The Client acknowledges that such requirements may be subject to various and contradictory interpretations. TCE, therefore, will use reasonable professional efforts and judgment to interpret applicable requirements as they apply to the Project. TCE cannot, and does not, warrant or guarantee that the Project will comply with all interpretations of, and/or the requirements of, other federal, state and/or local laws, rules, ADA requirements, codes, ordinances and regulations as they apply to the Project. In the event of a conflict between laws, codes and regulations, or opinions of various governmental entities having jurisdiction over this Project arises, we will notify you of the nature and impact of such conflict. The Client agrees to cooperate and work with TCE in an effort to resolve this conflict.

Construction Observation TCE shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractor's work and to determine if the work is proceeding in general accordance with the Contract Documents. The Client has not retained TCE to make detailed inspections or to provide exhaustive or continuous project review and observation services. TCE does not guarantee the performance of, and shall not have responsibility for, the acts or omissions of any contractor, sub-contractor, supplier or any other entity furnishing materials or performing any work on the project. TCE shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures of the Contractor. If the Client desires more extensive project observation or full-time project representation, the Client shall request such services be provided by TCE as Additional Services in accordance with the terms of this Agreement.

Defects in Service The Client shall promptly report to TCE any defects or suspected defects in TCE's work or services of which the Client becomes aware, so that TCE may take measures to minimize the consequences of such a defect. The Client warrants that he or she will impose a similar notification requirement on all contractors in his or her Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Client, and the Client's contractors or sub-contractors to notify TCE, shall relieve TCE of the costs of remedying the defects above that such remedy would have cost had prompt notification been given.

Insurance TCE shall secure and endeavor to maintain comprehensive general liability insurance and automotive liability insurance to protect from claims for bodily injury, death, or property damage which may arise in the performance of Services under this Agreement, and from claims under the Workers' Compensation Acts. TCE shall, if requested in writing, issue a certificate confirming such insurance to the Client.

TCE agrees to attempt to maintain professional liability coverage for the period of design and construction of the Project, and for a period of two years following substantial completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the consultants practicing the same professional discipline in the state where the project is located are able to obtain such coverage.

Jobsite Safety Neither the professional activities of TCE, nor the presence of TCE or his or her employees and sub-consultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies.

TCE and his or her personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Client agrees that the General Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the Client's agreement with the General Contractor. The Client also agrees that the Client, TCE and TCE's Consultants shall be indemnified and shall be made additional insureds under the General Contractor's general liability insurance policy.

Opinions of Probable Construction Cost In providing opinions of probable construction cost, the Client understands that TCE has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction cost provided herein are to be made on the basis of TCE's qualifications and experience. TCE makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

Standard of Care Services provided by TCE under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. No other guarantee or warranty is expressed or implied.

Extension of Protection The client agrees that any and all limitations of TCE's liability to the client by TCE shall include and extend to those individuals and entities TCE retains for performance of the services under the Agreement, including but not limited to the TCE's officers, partners and employees and their heirs and assigns, as well as TCE's sub consultants and their officers, employees, heirs and assigns.

Access to Site The client agrees to grant access to the site to TCE's employees for activities necessary in the performance of service. TCE will take reasonable precautions to minimize damage due to these activities. Any restoration of the site related to performance of services is not included nor will TCE be held responsible for such costs.

Soils Exploration (If Applicable) TCE will make reasonable efforts to determine where underground utilities are located so as to avoid damage during soils exploration work. Such services will be performed in a manner consistent with the ordinary standard of care. The Client recognizes that the research may not identify all underground improvements and that the information upon which TCE relies may contain errors or may not be complete. The client agrees, to the fullest extent permitted by law, to waive all claims and causes of action against TCE for damages to underground improvements resulting from TCE's work.

Electronic Files The Client acknowledges that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by TCE and electronic files, the signed or sealed hard-copy construction documents shall govern. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless TCE, its officers, directors, employees and sub-consultants, against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the TCE or from any reuse of the electronic files without the prior written consent of TCE. Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by TCE, and TCE makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall TCE be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

Consequential Damages Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor TCE, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and TCE shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

Hazardous Materials As used in this Agreement, the term hazardous materials shall mean any substances, including without limitation asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site. TCE shall have no responsibility for the discovery, presence, handling, removal, disposal of, or exposure to hazardous materials.

Termination/Expiration of Services This agreement may be terminated upon 10 days written notice by either party should the other fail to perform his obligations hereunder. In the event of termination, the Client shall pay TCE for all Services, rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses. If the project becomes inactive or is delayed for reasons beyond our control for more than two (2) months or two (2) years from date of the initial Service Agreement, whichever is less, TCE reserves the right to terminate the contract without penalties.