

May 8, 2023

Emmalee Cherington, DPW – Director of Planning  
Town of Middlebury  
1020 Route 7 South  
Middlebury, VT 05753

Re: Agreement  
Mary Hogan Stormwater Project  
A+E Project 23029

Dear Emmalee:

This Agreement is written pursuant to the Town of Middlebury's (OWNER) request for Aldrich + Elliott, PC (ENGINEER) to provide professional engineering consultant services as outlined below.

### **SCOPE OF SERVICES**

Professional engineering consultant services are to be performed by the ENGINEER as detailed in Attachment No. 1 of this Agreement. The OWNER may, from time to time, request changes in the scope of services to be performed under this Agreement. Any changes in scope, including an increase or decrease in the amount of the ENGINEER's compensation, shall be mutually agreed upon by and between the OWNER and the ENGINEER and shall be incorporated into this Agreement by a written Amendment signed by both parties.

### **BASIS OF COMPENSATION**

For services performed under this Agreement, the OWNER agrees to compensate the ENGINEER as follows:

I – Basic Services – Final Design	\$32,600.00	Lump Sum (LS)
II – Subsurface Investigation	\$2,900.00	Not-to-Exceed (NTE)
III – Special Services - Permitting	<u>\$4,800.00</u>	Not-to-Exceed (NTE)
<b>Total amount of items in this AGREEMENT</b>	<b>\$40,300.00</b>	

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

Lump Sum Fee: Compensates the ENGINEER for all costs incurred in the performance of this Agreement, including all labor, subconsultants and other expenses listed in Attachment No. 2 and shall be billed throughout the project based on a percent complete of the work.

Not-to-Exceed: Hourly Fee based on actual expenses incurred in the performance of this Agreement, to include a labor expense equal to the actual salaries of personnel, overhead expense of 1.70 times the labor expense, profit equal to 10% of labor and overhead expenses, plus subconsultant and other expenses listed in Attachment No. 2.

It is understood that the ENGINEER's labor rates are adjusted annually, on or about the first day of each calendar year and that the services provided under this Agreement shall use the current rates at the time that the work is performed.

### **TERMS AND CONDITIONS**

Refer to Attachment No. 3 for the Terms and Conditions that govern this Agreement.

### **EXECUTED AGREEMENT**

This Agreement shall be considered binding when duly authorized agents of the ENGINEER and the OWNER sign the document and one (1) executed copy is returned to the office of the ENGINEER. If this Agreement is not executed within sixty (60) days of the date on the Agreement, it may be subject to re-negotiation or withdrawal by the ENGINEER.

### **OFFER OF PROFESSIONAL ENGINEERING SERVICES**

The ENGINEER, as an independent agent, offers to provide the professional engineering services described in this Agreement, for the compensation specified.

**Aldrich + Elliott, PC**

Jason Booth, PE  
Vice President

**OWNER ACCEPTANCE**

The OWNER acknowledges this to be a binding Agreement and agrees to the conditions as stated. The ENGINEER is hereby directed to proceed with the scope of services.

The OWNER 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 date of invoice, that the ENGINEER may stop work, without consequence or liability of any kind, until the invoices are paid, as set forth in Terms and Conditions.

The OWNER warrants that the signature below is that of its duly authorized agent who possesses the full legal authority to execute this Agreement on behalf of the OWNER.

The OWNER acknowledges that this Agreement is comprised of, and incorporates by reference, Attachment Nos. 1 through 3.

**TOWN OF MIDDLEBURY, VERMONT**

\_\_\_\_\_  
Duly Authorized Agent

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

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

Executed in Duplicate  
Project 23029

**TOWN OF MIDDLEBURY  
MARY HOGAN STORMWATER IMPROVEMENTS**

**ATTACHMENT NO. 1  
SCOPE OF SERVICES**

The Town of Middlebury (OWNER) is planning to design and construct stormwater treatment practices on the Town owned portion of the Mary Hogan site which falls under the 3-acre requirements. Runoff from this site is largely separated into two (2) separate drainage areas consisting of a parking area adjacent to Mary Hogan Drive on the westerly side of the site and a larger drainage area to the east which includes tennis courts, the Memorial Sports Center, the Municipal Pool and associated parking. This scope of work is based on the design of two (2) separate treatment practices for the above-described drainage areas. This scope of work assumes the proposed practices can be interconnected to the larger drainage area(s) at the existing termination points (discharge) and new conveyance systems (piping, swales, etc) are not required other than to reach the closest point of flow conveyance.

This site abuts the Mary Hogan Elementary School which is a separate parcel and site. The two sites have separate drainage areas, however, sites surrounding the Town parcel contribute flow to the Mary Hogan Elementary School site and flow through the Town parcel. This scope of work excludes treatment of flow contributing to the Mary Hogan Elementary School. A formal delineation will be completed as part of this scope of work for review by the OWNER and the Mary Hogan Elementary School.

The Town is currently funding this phase of the project while construction funding is pursued. The ENGINEER will provide the following professional engineering consultant services under the scope of this Agreement:

**I – BASIC SERVICES – FINAL DESIGN**

**A. Field Surveys**

The ENGINEER shall use all existing surveys wherever possible and shall make additional field surveys and conduct office work related to said surveys as necessary for preparation of the final design and contract drawings for the project. Three (3) days of field survey (60 man-hours) and ½ day of field edits are budgeted in this scope of work. This scope of work includes survey assuming two separate practices will be designed to manage stormwater flows from the OWNERS site only.

**B. Hydrologic & Hydraulic Modeling**

The ENGINEER will prepare a Subwatershed delineation for the OWNERS site using the survey and high-accuracy LIDAR topography, on-site reconnaissance, and design/as-built plans as available. Through this effort connected impervious surface will be confirmed. This effort is critical for latter design efforts in appropriately sizing the practice.

The ENGINEER will develop a hydraulic and hydrologic model using HydroCAD. The model will be based on the subwatershed delineation. The model will be utilized to determine and confirm critical treatment volumes for each delineated sub-watershed to include Water Quality Volume (WQv) and Channel Protection Volume (CPv).

C. Basis of Design/Preliminary Evaluation

The ENGINEER will perform a desktop review utilizing the information gathered from the field survey and H&H analysis to evaluate stormwater practice options and available space to treat the site runoff. A summary memo will be prepared and submitted to the owner to document these findings.

D. Preparation of Final Design Plans and Specifications

The ENGINEER will make engineering investigations as are necessary and will compile such data as required for the design and drawings for the project. Drawings (plans), technical and construction specifications shall be prepared setting forth in sufficient detail the requirements for constructing the project. Specific tasks include:

1. Final design, detailed construction drawings, specifications, and contract forms complete and ready for construction bids for the proposed upgrades specified above.
2. This design shall include the following:
  - a. Utilization of existing designs, maps, soil borings and other available information to maximum extent feasible. This will include coordination with the OWNER and property owners to acquire and depict any relevant below ground infrastructure on the adjacent boundaries.
  - b. The plan/profile shall be at a horizontal scale of 1" = 40' and a vertical scale of 1" = 4'.
    - i. Specific information to be included on the plans will be roadway and driveway limits, curb locations, house locations, street addresses, existing utilities derived from as-built plans and field locations by "dig Safe", test pit locations, specimen trees and hedge rows, fences, approximate right-of-way locations, and street names.
    - ii. The Profile will include the existing grade along the centerline of the proposed improvements and the approximate elevations of the existing utilities at the points of intersection. All elevations will be referenced to NGVD 29 or NAVD 88 vertical control datum as appropriate.
    - iii. Designated wetlands, archeologically sensitive and/or soil contamination areas will be surveyed as appropriate and located on the drawings.
    - iv. Technical specifications for the civil and site components of the project will be prepared and provided in the CSI 16 Division format.
    - v. Full "front-end" specifications will not be prepared as part of this scope of services. A basic contractor solicitation package will be prepared for local contractors.
    - vi. For the "60% and 90% design review" a draft set of blueprints of the construction drawings, the specifications and the contract documents will be provide by the ENGINEER as follows:
      - a) One (1) copy for the OWNER
      - b) One (1) PDF copy for the OWNER
    - vii. For the final design plans, contract documents and specifications (construction set) the ENGINEER will provide the following:
      - a) One (1) copy for the OWNER
      - b) One (1) PDF copy for the OWNER.

3. ENGINEER's Opinion of Probable Construction Cost

An opinion of probable construction cost and total project cost, based upon completed final drawings and specifications will be furnished to the OWNER.

#### 4. Design Meetings

The ENGINEER will meet at reasonable customary intervals to provide a close liaison with the OWNER and other recognized authorities having jurisdiction in regard to the engineering phases of the project. Three (3) meetings are included in this agreement at the 30% (remote), 60% (in-person) and 90% (in-person) stages of the project.

## **II – SUBSURFACE**

### A. Soils Investigation

The ENGINEER will review any existing historical test pit and soils data within each area. Up to two (2) test pits have been included in the scope of work to identify the subsurface soil conditions including presence of seasonal high ground water. Each location will be pre-marked by the ENGINEER for review and approval by the OWNER and will be cleared through Dig Safe and other local utilities. A summary of the test pit results will be prepared and provided to the OWNER for record. This scope of work assumes that the OWNER will provide an excavator for this effort.

## **III – SPECIAL SERVICES – PERMITTING**

### A. Stormwater General Permit

The ENGINEER will assist the OWNER in preparing and submitting a NOI for a Stormwater General Permit for Construction Activities (CGP). It is expected that this project will fall into a Low Risk category.

### B. Act 250

It is anticipated that an ACT 250 administrative amendment or a minor amendment will be required for this project. Preparation of a minor amendment has been included in this scope of work.

### C. Wetlands

Wetlands permitting is not anticipated for this project and no wetlands are shown on the ANR Interest Locator for the project area. Contact will be made with the local wetlands specialist to obtain a write-off. Wetlands delineation and permitting is not included in this scope of work.

## **ADDITIONAL SERVICES**

The following services are not included in the scope of this Agreement, but may be provided at the request of the OWNER, upon issuance of a written Amendment to this Agreement:

- Easement assistance
- Permit assistance other than described above
- Wetland delineation and permitting
- Property and/or boundary surveys
- Archeological investigations
- Roadway or pedestrian design
- Bid and construction phase services
- Redesigns ordered by the OWNER or REGULATORY AGENCIES after final design plans have been reviewed and accepted
- Assistance to the OWNER on matters of easement or land acquisition, litigation or arbitration in regard to the project
- Other special services not identified herein, but which may become necessary at a later date

**End of Attachment No. 1**

**ATTACHMENT 2**  
**EXPENSE SHEET**

The expense items listed below will be billed as follows:

**A+E Employee Labor Rates:**

	Hourly Billing Rate Range
Project Principal (PP)	\$165 - \$185
Project Manager (PM)	\$135 - \$165
Project Engineer (PE)	\$105 - \$135
Staff Engineer (SE)	\$85 - \$105
Staff Technician (ST)	\$65 - \$85
Field Technician (FT)	\$85 - \$125
CAD Operator (CO)	\$75 - \$90
Administrative Staff (AS)	\$55 - \$75

These rate ranges are subject to change.

**Subconsultant & Vendor Expenses:**

- Subconsultants @ cost
- Outside Vendors @ cost

**Travel Related Expenses:**

- Auto Travel (to include gas and other service charges) @ current GSA rate/mile
- Other Travel (to include air fares, rentals, tolls, etc.) @ cost
- Meals & Lodging @ cost

**Reproduction Expenses:**

- Reproductions
  - 8-1/2 x 11 one sided copy @ cost
  - 8-1/2 x 11 two sided copy @ cost
  - 24 x 36 copy @ cost
  - 36 x 48 copy @ cost
  - mylar or velum plots @ cost

**Administrative Expenses:**

- Postage @ cost
- Shipping @ cost
- Other administrative Expenses @ cost

## ATTACHMENT NO. 3

### TERMS AND CONDITIONS

1. **Extent of Agreement:** This Agreement comprises the final and complete agreement between the OWNER and the ENGINEER. It supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, relating to the subject matter of this Agreement. Execution of this Agreement signifies that each party has read the document thoroughly, has had any questions explained by independent counsel and is satisfied. Amendments to this Agreement shall not be binding unless made in writing and signed by both the OWNER and the ENGINEER.
2. **Standard of Care:** The standard of care for all services provided by the ENGINEER under this Agreement will be the care and skill ordinarily provided by professional engineers under similar circumstances at the same time, in the same locality, under similar conditions.
3. **Billings/Payments:** Invoices will be submitted to the OWNER monthly for services and expenses, in the ENGINEER's standard format and are due upon receipt, unless other mutually satisfactory written arrangements have been made between the OWNER and the ENGINEER. In the event any portion of an invoice remains unpaid sixty (60) days after the invoice date, the invoice shall be considered past due and the OWNER shall pay a finance charge in the amount of 1.5% per month on unpaid balances, as well as the ENGINEER's collection costs, including reasonable attorney's fees. In the event of a past due invoice, the ENGINEER may suspend the performance of services upon written notice, without liability whatsoever to the OWNER. In the event any portion of an invoice remains unpaid ninety (90) days after the invoice date, the ENGINEER may terminate the Agreement, without further notice and without liability whatsoever to the OWNER. Payment of invoices is in no case subject to unilateral discounting or set-offs by the OWNER and payment is due regardless of suspension or termination of the Agreement by either party.
4. **Termination:** This Agreement may be terminated upon ten (10) calendar days written notice by either party. In the event of termination, the OWNER shall pay the ENGINEER for all services rendered to the date of termination, all reimbursable expenses and reasonable termination expenses.
5. **Additional Services:** Services not explicitly detailed in this Agreement will be considered additional and subject to additional compensation and schedule adjustment. Additional services will not be provided, nor additional compensation invoiced, without the OWNER's prior authorization to proceed.
6. **Subconsultants:** The ENGINEER may use the services of subconsultants when, in the ENGINEER's sole opinion, it is appropriate and customary to do so.
7. **Assignment:** Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.
8. **Timeliness:** The ENGINEER will perform its services with due and reasonable diligence and expediency consistent with sound professional practices. However, the ENGINEER and OWNER are aware that many factors outside the ENGINEER's control may affect the ENGINEER's ability to complete the services to be performed under this Agreement. The ENGINEER is not responsible for delays caused by factors beyond the ENGINEER's reasonable control and consequently, the OWNER agrees that the ENGINEER is not responsible for damages, nor shall the ENGINEER be deemed to be in default of this Agreement for such a delay. When such a delay occurs, the ENGINEER's schedule and fees shall be equitably adjusted in accordance with the Additional Services provision of this Agreement.
9. **Code Compliance:** The ENGINEER shall put forth reasonable professional efforts to comply with applicable laws, codes and regulations in effect as of the date of this Agreement. Design changes made necessary by laws, codes and regulations newly enacted after this date shall entitle the ENGINEER to an adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement.



10. **Information Provided by Others:** The OWNER shall furnish (at the OWNER's expense) all information, requirements, reports, data, surveys and instructions required by this Agreement. The ENGINEER may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.
11. **Governing Law:** The OWNER and the ENGINEER agree that all claims and disputes arising out of or in any way connected to this Agreement, its validity, interpretation, performance and remedies for breach of contract, shall be governed by the laws of the State of Vermont.
12. **Indemnifications:** The ENGINEER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWNER, its officers, directors and employees (collectively, OWNER) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent cause by the ENGINEER's negligent acts or omissions under this Agreement. The OWNER agrees, to the fullest extent permitted by law, to indemnify and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused by the OWNER's negligent acts or omission in connection with the Project, including the acts of its contractors, subcontractors, consultants or others for whom the OWNER is legally liable. Neither the OWNER nor the ENGINEER shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
13. **Attorney's Fees:** In the event of any litigation arising from or related to the services provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, reasonable attorney's fees and other related expenses. In the event of a non-adjudicated settlement of litigation between the parties or the resolution of a dispute by arbitration, the term "prevailing party" shall be determined by that process.
14. **Consequential Damages:** Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of the fault or whether it was committed by the OWNER or ENGINEER, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.
15. **Risk Allocation:** To the maximum extent permitted by law, the ENGINEER's total liability to the OWNER for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this Agreement, from any cause or causes, shall not exceed the total amount of the ENGINEER's fees or \$100,000.00, whichever is greater. Such causes include, but are not limited to the ENGINEER's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.
16. **Dispute Resolution:** Any claim or dispute between the OWNER and the ENGINEER shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator(s).
17. **Ownership of Documents:** All documents produced by the ENGINEER under this Agreement, both written and electronic, shall remain the property of the ENGINEER, including all copyrights.
18. **Unauthorized Changes:** In the event that the OWNER consents to, allows, authorizes or approves of changes to any plans, specifications, reports or other documents provided under this Agreement, without prior written approval by the ENGINEER, such unauthorized changes shall be at the OWNER's sole risk and without liability to the ENGINEER. The OWNER agrees to release the ENGINEER from any liability and indemnify and hold harmless the ENGINEER, from any claims arising from the use or results of such changes.
19. **Reuse of Documents:** All documents produced under this Agreement, both written and electronic shall be used solely for purposes directly related to the project under which they were performed. Such documents are not intended or represented to be suitable for reuse by the OWNER or others on an extension of the project or on any other project. Any such reuse without written verification or adaptation by the ENGINEER, will be at the OWNER's sole risk and without liability to the ENGINEER. The OWNER agrees to indemnify and hold harmless the ENGINEER, against all damages, liabilities or costs, arising from any such reuse of documents.

20. **Electronic Files:** The OWNER acknowledges that differences may exist between electronic files and the printed hard-copy documents delivered by the ENGINEER. In the event of such a conflict, the hard-copy documents shall govern. Under no circumstances shall delivery of electronic files for use by the OWNER be deemed a sale by the ENGINEER and the ENGINEER makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. In no event shall the ENGINEER be liable for indirect or consequential damages as a result of the OWNER's use or reuse of the electronic files and the OWNER will indemnify and hold harmless the ENGINEER from all claims arising from use or reuse of the electronic files.
21. **Access to Site:** The OWNER shall provide for the ENGINEER's right to enter the site in order for the ENGINEER to fulfill the scope of services included hereunder. The ENGINEER will take precautions to minimize damage due to these activities, but shall not be held responsible for the restoration of any resulting damage. The OWNER understands that use of testing or other equipment may unavoidably cause some damage, the correction of which is not the responsibility of the ENGINEER under this Agreement.
22. **Buried Utilities:** The ENGINEER and/or its authorized subconsultant will conduct the research that in its professional opinion is necessary with respect to the identification and assumed locations of underground utilities and other improvements. Such services by the ENGINEER or its subconsultant will be performed in a manner consistent with an ordinary and reasonable standard of care. The OWNER recognizes that the research may not identify all underground improvements and that the information upon which the ENGINEER relies may contain errors or may not be complete. The OWNER agrees, to the fullest extent permitted by law, to waive all claims and causes of action against the ENGINEER and anyone for whom the ENGINEER may be legally liable, for damages to underground utilities and other improvements resulting from subsurface penetration locations established by the ENGINEER.
23. **Hidden Conditions:** A condition is hidden if it cannot be investigated by reasonable visual observation or records reviewed as customary in the performance of the services being rendered. If the ENGINEER has reason to believe that such a condition may exist, the ENGINEER shall notify the OWNER who shall authorize and pay for costs associated with the investigation or correction after due notification, or the ENGINEER has no reason to believe that such a condition exists, the OWNER is responsible for all risks associated with this condition and the ENGINEER shall not be responsible for the existing condition nor any resulting damages to persons or property.
24. **Hazardous Materials:** Unless specifically agreed upon prior to the commencement of services, the ENGINEER shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form.
25. **Contractor's Responsibility:** Neither the professional activities of the ENGINEER, nor the presence of the ENGINEER or its employees and subconsultants at a construction site, shall relieve the Construction Contractor (and any other agent of the OWNER) of their obligations, duties and responsibilities to complete the work in conformance with their agreement with the OWNER. The ENGINEER and its personnel have no authority to exercise any control over any Construction Contractor (and any other agent of the OWNER) or their employees in connection with their work 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 and any health or safety precautions either appropriate or required by any regulatory agencies to maintain job-site safety. The OWNER agrees that the Construction Contractor is solely responsible for job-site safety and warrants that this intent shall be made evident in the OWNER's agreement with the Construction Contractor. The OWNER also agrees that the ENGINEER shall be indemnified against any claims resulting from actions or inactions of the Construction Contractor (and any other agent of the OWNER) and shall be made an additional named insured under the Construction Contractor's general liability insurance policy.
26. **Severability:** Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void and all remaining provisions shall continue in full force and effect.
27. **Titles:** The titles used in this Agreement are for general reference only and are no part of the Agreement.

**End of Attachment No. 3**