

**MASTER ENGINEERING SERVICES AGREEMENT BETWEEN
TOWN OF BRISTOL, VERMONT
AND VTM ENGINEERING, PLC
(DRAFT)**

THIS AGREEMENT effective June 25, 2024 (“Effective Date”) is between the TOWN of Bristol, Vermont (“TOWN”) with offices at 1 South Street, PO Box 249 Bristol, Vermont 05443, and VTM Engineering, PLC (“ENGINEER”) with offices at 2941 Shelburne Falls Road, Hinesburg, Vermont 05461.

TOWN and ENGINEER in consideration of their mutual covenants set forth herein agree as follows:

SERVICES OF ENGINEER: ENGINEER shall provide professional engineering services to the TOWN on an as needed basis as set forth herein. Professional services are to be provided on a project-by-project basis and will be enumerated in a Work Order following the general format shown in Exhibit A, attached hereto and incorporated herein.

TOWN’S RESPONSIBILITIES: TOWN shall provide the ENGINEER with all background information and other relevant data related to the project including: design objectives and constraints; previous reports; performance requirements; existing conditions investigations; all other applicable as-built and other relevant drawings, reports or other information that the TOWN may have access to or be in possession of.

TOWN shall arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

If the TOWN owns the Project site, TOWN will warrant that all known hazardous materials on or beneath the site have been identified to the ENGINEER. The ENGINEER shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, unidentified or undisclosed hazardous materials. The ENGINEER shall not be required by the TOWN to provide certifications that soils, including soil mixed with other clean construction or demolition debris, are or are not contaminated unless specifically outlined in the scope of work.

The ENGINEER may reasonably rely upon the accuracy and completeness of all information furnished by the TOWN, including its engineers, contractors, specialty contractors, manufacturers, suppliers, and publishers of technical standards pursuant to this Agreement.

The ENGINEER may reasonably rely on the express and implied representations made by contractors, manufacturers, suppliers, and installers of equipment, materials, and products required by the construction documents as being suitable fit for their intended purposes and compliant with the construction documents and applicable project requirements.

PERFORMANCE OF SERVICES: The ENGINEER shall perform the Services as outlined in a specific Work Order. The Scope of Services shall not be changed without the written agreement of both the ENGINEER and the TOWN.

TOWN’S AUTHORIZED REPRESENTATIVE: The TOWN shall designate, by signing, that he/she will act as TOWN’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 TOWN'S policies and decisions regarding services for the Project. SCHEDULE FOR RENDERING SERVICES

SCHEDULE: ENGINEER is authorized to begin services as of the Effective Date of this Agreement._

ENGINEER shall provide a separate schedule for each project which shall be outlined in the specific Work Order. If TOWN authorizes changes in the scope, extent, or character of the Project, the time allotted for completion of ENGINEER'S services, and the rates and amounts of ENGINEER'S compensation shall be adjusted accordingly. If the ENGINEER is hindered, delayed or prevented from performing under the Agreement as a result of any act or neglect of the TOWN (or those for whom the TOWN is responsible) or force majeure, the time for completion of the ENGINEER'S work shall be extended by the period of the resulting delay and the rates and amounts of ENGINEER'S compensation shall be adjusted accordingly. Force majeure includes, but is not limited to acts of God, wars, terrorism, strikes, labor walkouts, fires, natural disasters, or requirements of governmental agencies.

The ENGINEER will attend periodic progress meetings on a schedule to be determined by the TOWN.

COMPENSATION, INVOICING AND PAYMENTS: The TOWN shall pay the ENGINEER for the services performed or furnished as provided for in the Work Order.

The ENGINEER may adjust his/her hourly rate structure on an annual basis. However, rates shall not be modified for or during a specific project. If ENGINEER'S hourly rate schedule is modified, TOWN shall be provided written notification of the ENGINEER'S revised hourly rate schedule.

The ENGINEER may submit requests for periodic progress payments for services rendered. Payments shall be due and owed by the (TOWN) within 30-days of receipt of the ENGINEER'S invoice for services. If invoices are not paid within 60-days, ENGINEERs may, after giving seven (7) days written notice to the TOWN, suspend services under this Agreement until the ENGINEER has been paid all amounts due. If the TOWN believes that there are discrepancies or other reasons they cannot pay the ENGINEER'S invoice as submitted, they shall promptly notify ENGINEER of such discrepancies or and request that they be remedied.

OPINION OF PROBABLE CONSTRUCTION COSTS: The ENGINEER'S opinion of probable construction costs, if included in its scope of services, represents its reasonable judgment based on the most up to date cost information available to the ENGINEER. The TOWN acknowledges that the ENGINEER has no control over actual construction costs or contractor'S methods of determining prices, or over competitive bidding, or market conditions. The ENGINEER cannot and does not warranty or guarantee that proposals, bids, or actual construction costs will not vary from the ENGINEER'S opinion of probable cost. ENGINEER shall not be responsible for any cost variance.

ENGINEER'S PERFORMANCE: The standard of care for all engineering related services performed or furnished by the ENGINEER under this Agreement will be the care and skill ordinarily used by members of the engineering profession practicing under similar circumstances at the same time and in the same locality on similar projects. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER'S services.

ENGINEER shall be responsible for the technical accuracy of its services and its instruments of service resulting therefrom, and TOWN shall not be responsible for discovering deficiencies, if any, in them. ENGINEER shall correct known deficiencies in its instruments of service without additional compensation except to the extent such action is directly attributable to deficiencies, errors or omissions

in TOWN-furnished information.

ENGINEER will use reasonable care to comply with applicable laws, regulations, and TOWN- mandated standards as of this Agreement's Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to TOWN's responsibilities or to ENGINEER's scope of services, times of performance, or compensation, which shall be adjusted equitably.

ENGINEER may employ such contractors and sub-consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive written objections by the TOWN.

CONSTRUCTION: ENGINEER shall not direct, control, or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the site, nor for any failure of any contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

ENGINEER neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents, which contractor is solely responsible for its errors, omissions, and failure to carry out the work.

ENGINEER shall not be responsible for the acts of omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or any other person, (except ENGINEER's own agents, employees, and ENGINEERS) at the site or otherwise furnishing or performing any work; or for any decision made regarding the contract documents, or any application, interpretation, or clarification, of the contract documents, other than those made by the ENGINEER.

Shop drawing and submittal review by ENGINEER shall apply only to the items in the submissions and only for the purpose of assessing, if upon installation or incorporation in the Project, they are generally consistent with the construction documents. TOWN agrees that the contractor is solely responsible for the submissions (regardless of the format in which provided, i.e. hard copy or electronic transmission) and for compliance with the contract documents. TOWN further agrees the ENGINEER's review and action in relation to these submissions shall not constitute the provision of means, methods, techniques, sequencing or procedures of construction or extend to safety programs of precautions. ENGINEER's consideration of a component does not constitute acceptance of the assembled item.

ENGINEER's site observations and schedule shall be agreed upon in the Work Order. Through standard, reasonable means, ENGINEER will become generally familiar with observable completed work. If ENGINEER observes completed work that is inconsistent with the construction documents, that information shall be communicated to the contractor and TOWN to address.

INSURANCE: For the duration of the Project, the ENGINEER shall procure and maintain the following insurance coverage and Certificates of Insurance will be provided the TOWN upon written request. The insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

- | | | |
|-----|--|------------------|
| (1) | Worker's Compensation | Statutory Limits |
| (2) | Automobile Liability (Combined Single Limit) | \$1,000,000 |

(3) Professional Liability (Per Claim and Aggregate) \$1,000,000/\$1,000,000

Notwithstanding any other provisions of this Agreement, and to the fullest extent permitted by law, the total liability, of the ENGINEER and their officers, directors, employees or agents, to anyone claiming by, through or under TOWN for any claims, losses, costs, or damages arising out of, resulting from, of in any way related to the Project or the Agreement for any claim or cause of action, including but not limited to the negligence, professional errors or omissions strict liability, breach of contract, indemnity, subrogation or warranty (express or implied), hereafter referred to as the "Claims", shall not exceed the total amount paid to the ENGINEER.

DAMAGES: ENGINEER makes no guarantees or warranties and, specifically, no representation or warranty of merchantability, nor will we warrant that any party will approve or consent ENGINEER's opinions. In addition, you hereby agree to limit our liability to you with respect to all services relating to this Agreement, due to negligent acts, errors, or omissions by us, such that the total aggregate liability of ENGINEER will not exceed the amount actually paid to the ENGINEER, whichever is greater.

INDEMNIFICATION AND MUTUAL WAIVER: To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless the TOWN and its officers and employees from claims, costs, losses, and damages arising out of or relating to the Project, provided that such claims, costs, losses, or damages are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by the ENGINEER's negligent acts or omissions.

TOWN shall indemnify and hold harmless the ENGINEER and its officers, directors, employees or agents from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of ENGINEER's, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a specific Project provided that any such claims, costs, losses, or damages are attributable to bodily injury, sickness, disease, or death of, or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of TOWN or its officers, directors, employees, ENGINEER's, agents, or others retained by or under contract to the TOWN with respect to this Agreement and/or to the Project.

To the fullest extent permitted by law, TOWN and ENGINEER waive against each other, and the other's employees, officers, directors, insurers, and subcontractors, any and all claims for or entitlement to special, incidental, indirect, exemplary, or consequential damages arising out of, resulting from, or in any way related to the Project or ENGINEER's services.

In the event claims, losses, damages or expenses are caused by the joint or concurrent fault of the ENGINEER and TOWN, they shall be borne by each party in proportion to their respective fault, as determined by a mediator or court of competent jurisdiction.

CONSEQUENTIAL DAMAGES: In no event shall either TOWN or ENGINEER be liable for consequential damages, including, without limitation, loss of opportunity, loss of use, or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

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. ENGINEER shall be compensated in full for services performed and expenses incurred prior to the date of termination, suspension, or abandonment.

USE OF DOCUMENTS: All documents (data, calculations, reports, Drawings, Specifications, Record Drawings and other deliverables, whether in printed form or electronic media format, provided by ENGINEER to TOWN pursuant to this Agreement) are instruments of service in respect to the Project and shall be owned by the ENGINEER. The TOWN shall not rely in any way on any document unless it is in final format, signed or sealed by the ENGINEER.

Either party to this Agreement may rely that data or information set forth on paper (also known as hard copy) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Information in electronic format or text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience and not for reliance by the receiving party. The use of such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies will govern.

Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests and/or procedures within 60 calendar days of receipt, after which the receiving party shall be deemed to have accepted the transferred data thus. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such information resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the creator.

The ENGINEER's document retention policy will be followed upon Project closeout. Executed copies of agreements, work orders, letters of understanding or proposals; design or other documents created by the ENGINEER or received from the TOWN or a third party; plan review submittals from a third party and the ENGINEER's review of those submittals; and studies or reports prepared by the ENGINEER will be kept for a period of 14 years after Project closeout.

COOPERATION: The TOWN agrees to cooperate fully with the ENGINEER 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 ENGINEER in connection therewith.

STANDARD OF CARE: In providing services under this Agreement, the ENGINEER shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. The ENGINEER makes no warranty, express or implied, as to its professional services rendered under this Agreement.

ADDITIONAL SERVICES FOR PERMIT ACQUISITION: By following acceptable design standards, and normal and customary standards of the ENGINEER, we do not imply that the engineered product will meet all permit and Board approvals. It is understood by the TOWN 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 TOWN'S obligation to pay invoices is in no way related to obtaining permits or approvals.

INDEPENDENT CONTRACTOR STATUS: The ENGINEER and TOWN agree that the ENGINEER is an independent contractor and not a partner, employee, or agent of the TOWN for any purpose.

SUCCESSORS, ASSIGNS AND BENEFICIARIES: TOWN and ENGINEER are hereby bound, as are their respective successors, employees and representatives to the other party to this Agreement with respect to all covenants, terms, promises, and obligations contained herein.

Neither the TOWN nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, monies that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is required by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Unless expressly provided otherwise in this Agreement, nothing contained shall be construed to create, impose, or give rise to any duty owed by TOWN or ENGINEER to any Contractor, Subcontractor, Supplies, or other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken to this Agreement will be for the sole and exclusive benefit of TOWN and ENGINEER and not for the benefit of any other party.

DISPUTE RESOLUTION: TOWN and ENGINEER agree to direct negotiations of all disputes between them in good faith for a period of 30 calendar days from the date of notice by either party.

If the parties fail to resolve a dispute through direct negotiation, TOWN and ENGINEER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation. The independent mediator shall be jointly agreed upon by the TOWN and the ENGINEER within 30 calendar days. TOWN and ENGINEER agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within 120 calendar days of notice of the dispute unless the parties mutually agree to a longer period. If such mediation is unsuccessful in resolving a Dispute, then the parties may seek to have the Dispute resolved by a court of competent jurisdiction. Any costs related to mediation shall be borne equally by the parties.

LEGAL JURISDICTION: This Agreement is to be governed by the laws of the state of Vermont.

MISCELLANEOUS PROVISIONS: Any notice required under this Agreement will be in writing, addressed to the designated party at its address in the signature page and served personally, by facsimile, by registered or certified mail (postage prepaid), or by a commercial courier service. All notices shall be effective upon the date of receipt.

All express representations, waivers, indemnifications, and limitations of liability in this Agreement will survive its completion and/or termination.

Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the TOWN and ENGINEER, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that expresses the intention of the stricken provision.

A party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion, which is the point where the Project can be utilized for the purposes for which it was intended.

This Agreement and associated Work Orders constitutes the entire agreement between TOWN and ENGINEER and supersedes all prior or oral understandings. This Agreement may be amended only by a mutually agreed and executed written instrument.

With the execution of this Agreement, ENGINEER and TOWN shall designate specific individuals to act as ENGINEER's and TOWN's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of TOWN under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

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: _____ (ENGINEER) _____ (TOWN)

N WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

VTM Engineering, PLC

Town of Bristol

By: _____
Steven L. Palmer, PE

By: _____
Valerie Capels

Title: President

Title: Town Administrator

Date Signed: 07/08/2024

Date Signed: 07/08/2024

**VTM Engineering, PLC
2024 RATE SHEET**

PERSONNEL

Principal Engineer	\$130.00/hour
Engineer	\$100.00/hour
Survey Crew & Equipment	\$150.00/hour

REIMBURSABLE EXPENSES

The items below will be billed at cost, unless stated as included in Lump Sum or Unit Prices:

Mileage	\$0.655/Mile
Sub-Contractors	Cost + 8%
Reproduction-Drawings, Reports, Specs	Cost + 8%
Other Direct Costs	Cost + 8%

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EXAMPLE WORK ORDER

Town of Bristol, Vermont

Project Title

Work Order No. _____

ENGINEERS' PROJECT NO. **XXXXXX**

Project Description:

All Work performed under this Work Order shall be done under the provisions of the MASTER ENGINEERING SERVICES AGREEMENT between the TOWN of Bristol, Vermont and VTM Engineering, PLC dated 6/24/24.

The scope of work to be performed under Work Order No. _____ shall consists of ...

Schedule:

A task specific schedule is included **as Attachment A** of this Work Order.

Compensation:

The TOWN shall pay the ENGINEER for the services on a **(T&M, Not to exceed, or Lump Sum)** basis in accordance with **Attachment B** of this Work Order. **Total costs for this project shall not exceed _____.**

Submitted by: **VTM Engineering, PLC**

By: _____
Steven Palmer, PE

Title: President

Date: _____

Approved: **Town of Bristol**

By: _____
Valerie Capels

Title: Town Administrator

Date: _____

Additional Comments: None

Attachment A

Project Title

Work Order No. _____

Schedule

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Attachment B

Project Title

Work Order No. _____

Anticipated Project Costs

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