



Engineering, Planning,
Landscape Architecture
and Environmental Science

MILONE & MACBROOM

July 21, 2016

Mr. Lane Morrison, Selectboard Chair
Town of Charlotte
P.O. 119
Charlotte, VT 05445

RE: Contract for Engineering Construction Services for Swale Improvements & Bio-Retention Area Ahead of the Storm, Thorp Brook Headwaters Restoration East Thompson Point Road, Charlotte, Vermont

Dear Mr. Morrison:

Milone & MacBroom, Inc. (MMI) is pleased to submit this contract to formalize our agreement to assist the Town of Charlotte (Town) with the *Ahead of the Storm, Thorp Brook Headwaters Restoration* project along East Thompson Point Road, Charlotte, Vermont. The project includes assisting the Town with construction services for installation of swale improvements and a bio-retention area along East Thompson Point Road.

The anticipated scope of work is detailed below. Deliverables are underlined. The budget has been synchronized with the final Better Back Roads Grant awarded to the Town from VTrans.

SCOPE OF SERVICES

1. Review submittals from contractor for consistency with project design and answer technical questions about the design.
2. Participate in up to four (4) visits during construction. Construction visits will be coordinated with the contractor to be present during key stages and are anticipated to include: pre-construction meeting, two (2) progress checks during construction, and a post-construction meeting. Verification of the location of proposed site features will be completed during the construction visits in coordination with the contractor.
3. Document observed construction activities and progress following site visits in construction observation logs that will be distributed via email within 24 hours of each site visit.
4. Write a brief project summary of work completed and expected benefits including before and after photographs to document the completion of construction.

PROFESSIONAL FEES

The work described above will be completed on an hourly basis at our preferred hourly rates (attached) plus direct expenses, not to exceed \$3,000.

EXCLUSIONS

Please note that the following services are not included in this proposal:

1. Full-time on-site construction observation and construction administration.
2. Post-construction survey.

Should the above items or any additional services be required, they will be provided only after consultation with the Client to determine an agreed-upon task list and fee estimate.

SCHEDULE

MMI will proceed with the services under this Agreement promptly and diligently in accordance with the above scope following acceptance of this proposal. It is understood that this work may be subject to delays due to weather, stakeholder scheduling, strikes, or any other cause beyond the reasonable control of MMI.

STANDARD TERMS AND CONDITIONS

Work will be performed in accordance with MMI's Standard Terms and Conditions (attached and incorporated by reference).

ACCEPTANCE

If this Agreement satisfactorily sets forth your understanding of the arrangement between us, please print, sign, and return a copy for our files.

We are excited to continue work to improve water quality in the Thorp Brook Watershed.

Sincerely,

MILONE & MACBROOM, INC.

Sincerely,



Jessica Louisos, P.E.
Water Resource Engineer



Roy Schiff, Ph.D., P.E.
Water Resource Scientist & Engineer

The above proposal and attached Standard Terms and Conditions are understood and accepted by:

Mr. Lane Morrison, Selectboard Chair
c/o Town of Charlotte

Signature _____ Date _____

(Print name and title)

2016 Preferred Hourly Rates & Reimbursable Expenses

Northern New England Regional Offices

Principal	\$160.00	Per Hour
Senior Licensed Professional/Specialist	\$134.00	Per Hour
Lead Licensed Professional/Specialist	\$124.00	Per Hour
Licensed Professional/Specialist	\$113.00	Per Hour
Senior Engineer/Designer/Planner	\$103.00	Per Hour
Engineer/Designer/Planner	\$ 93.00	Per Hour
Resident Project Representative	\$113.00	Per Hour
Chief Inspector	\$103.00	Per Hour
Senior Inspector	\$ 93.00	Per Hour
Senior Draftsperson/Technician	\$ 83.00	Per Hour
Draftsperson/Technician	\$ 77.00	Per Hour
Clerical	\$ 47.00	Per Hour

Reimbursable Expenses

Bond Prints	\$ 2.00	Each
Large Bond Prints	\$ 3.00	Each
Fixed Line Mylars	\$75.00	Each
Color Plots/Mylars	\$30.00	Each
Large Color Plots/Mylars	\$45.00	Each
Photo Copies – 8½ x 11	\$ 0.12	Per Copy
Photo Copies – 11 x 17	\$ 0.24	Per Copy
Color Copies – 8½ x 11	\$ 1.25	Per Copy
Color Copies – 11 x 17	\$ 2.25	Per Copy
Binding 0-200 pages	\$ 6.00	Per Bound Copy
201 or more pages	\$ 7.50	Per Bound Copy
Board Mounting	\$25.00	Each
FedEx – \$0-\$25	\$25.00	Per FedEx
FedEx – Over \$25	Cost	Per FedEx
Mileage	(IRS Rate)	Per Mile

2016 northern new england regional pfd rates exp

STANDARD TERMS AND CONDITIONS

Unless specifically excluded in the Contract, these Terms and Conditions are incorporated by reference into the foregoing proposal or contract and shall be part of the Agreement under which Services are to be performed by Milone & MacBroom, Inc. (**MMI**) for the **Client**.

- 1. Method of Payment:** Monthly, **MMI** will invoice **Client** for all Services rendered during the previous month. Invoices will be due upon receipt. Any unpaid invoices and charges will draw late payment fees at 1½% per month commencing 30 days after date of invoice. **Client** shall notify **MMI** in writing of any disputed amount within 10 days after date of invoice; otherwise, **Client** shall be deemed to have waived any objection to all invoice charges and agreed to the invoice being acceptable. Payment thereafter shall first be applied to accrued interest and then to the principal unpaid amount. Lump Sum Fee Price and Fixed Price contracts will be invoiced on a percent-complete basis as determined by **MMI**. Unless otherwise agreed, out-of-pocket costs for mileage, special mailing, reprographics, and similar costs will be invoiced as additional direct expenses. Subconsultant fees will be invoiced at cost plus a 10 percent markup for processing. In the event that **MMI** retains a collection agency or attorneys to recover any monies owed by **Client** to **MMI**, then **MMI** shall also be entitled to recover its reasonable cost of collection and legal costs from **Client**, including, but not limited to, all fees and costs incurred by **MMI** under mediation and litigation proceedings. **MMI** may suspend or terminate any and all of the Services if payment of any invoiced amount not reasonably in dispute is not received by **MMI** within 60 days from the date of **MMI's** invoice. Such suspension of services is done without waiving any other claim against **Client** and without incurring any liability to **Client** for such suspension due to **Client's** breach of payment terms. Termination shall not relieve **Client** of its obligation to pay amounts incurred up to termination.

The **Client's** obligation to pay for the Services performed under this Agreement is in no way contingent upon **Client's** ability to obtain financing, zoning, approval of governmental or regulatory agencies, favorable judgment of lawsuit, or upon **Client's** successful completion of project. Should Services be suspended for a period of ninety (90) days, **MMI** shall be entitled to additional compensation to reinitiate work. Lump sum fees, if applicable, quoted in this Contract shall remain valid for a period of twelve (12) months from the date of Contract. Thereafter, they may be adjusted in accordance with **MMI's** current rate structure. Hourly personnel rates may be adjusted on an annual basis.

- 2. Level of Services:** The Level of Service will be performed for the exclusive benefit of **Client**. **MMI** will perform the Services using that degree of skill and care ordinarily exercised under similar conditions by reputable members of **MMI's** profession practicing in the same or similar locality at the time of performance. No other warranty, express or implied, is made or intended, and the same are specifically disclaimed.

Client shall not be entitled to assert a claim against **MMI** based on any theory of professional negligence or violation of the standard of care unless and until **Client** has obtained the written opinion from a licensed, independent, and reputable engineering and/or environmental professional, as appropriate for the Services in question, that **MMI** has violated the standard of care applicable to **MMI's** performance of those Services under this Contract. **Client** shall promptly provide such independent opinion to **MMI**, and the parties shall endeavor in good faith to resolve the claim within 30 days.

- 3. Deliverables:** All hard paper copies of deliverables, including, and limited to, any and all reports, drawings, plans, and specifications prepared by **MMI** hereunder shall be delivered to **Client** upon final payment for **MMI's** Services. Deliverables may not be used or reused by **Client**, its employees, agents, or subcontractors in any extension of the project or on any other project or any other use without the prior written consent of **MMI**. **Client** agrees that all deliverables furnished to the **Client** not paid for in full will be returned to **MMI** upon demand and will not be used for design, construction, permits, or licensing. All originals of such deliverables shall remain in possession of and the property of **MMI**. Copies of any electronic media or disks of originals of any of **MMI's** deliverables, such as designs, specifications, calculations, CAD documents, etc., shall not be made available unless a specific agreement is made to the contrary as part of the Scope of Services. All the drawings, plans, specifications, and deliverables prepared by **MMI** are instruments of **MMI's** service, and **MMI** shall be deemed the author of them and will retain all common law, statutory, and other reserved rights, including, but not limited to, the copyrights.

MMI shall have the right to include photographic or artistic representations of the Project among **MMI's** promotional and professional materials. **MMI** shall be given reasonable access to the Project to make such representations. **Client** shall advise **MMI** of confidential or proprietary information which should be excluded from promotional materials.

- 4. Limitation of MMI's Liability to Client:** In recognition of the relative risks and benefits of the Project to both the **Client** and **MMI**, the **Client** agrees that except for circumstances caused by the willful misconduct of **MMI**, all claims for damages asserted against **MMI** by **Client**, including claims against **MMI's** directors, officers, shareholders, employees, and agents, are limited to the total fee for services rendered or \$250,000.00, whichever is less. **MMI** is solely responsible for its personnel only, and no

others. **MMI** shall not be responsible for any special, incidental, indirect, or consequential damages (including loss of profits) incurred by **Client** as a result of **MMI's** performance or nonperformance of Services. **MMI** shall not be liable for extra work or other consequences due to changed conditions or for costs related to failure of the construction contractor or materialmen or service provider to install work in accordance with the plans, specifications, or applicable code, or for the actions or inactions of regulatory agencies. Any claim shall be deemed waived unless made by **Client** in writing and received by **MMI** within one (1) year after completion or termination of the Services.

5. **Client Indemnification:** **Client** shall indemnify and hold harmless **MMI** and its shareholders, directors, officers, employees, and agents against all losses or claims, and costs incidental thereto (including costs of defense, settlement, and reasonable attorney's fees) which any or all of them may incur, resulting from bodily injuries (or death) to any person, damage (including loss of use) to any property, or contamination of or adverse effects on the environment, arising out of or which are in any way connected with (i) the acts or omissions of **Client**, **Client's** employees, agents, and subcontractors, or (ii) **Client's** breach of Contract.
6. **Required Disclosures by Client:** **Client** shall provide **MMI** all information which is known or readily accessible to **Client** which may be reasonable and/or necessary for completion of the Services by **MMI** or protection or safety of **MMI** personnel.
7. **Force Majeure:** Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the control of the other party and which could not reasonably have been anticipated or prevented. For purposes of this Contract, Force Majeure includes, but is not limited to, adverse weather conditions; floods; epidemics; war; riot; strikes; lockouts and other industrial disturbances; unknown site conditions; accidents; sabotage; fire; loss of or failure to obtain permits; unavailability of labor, materials, fuel, or services; court orders; acts of God; and acts, orders, laws, or regulations of the Government of the United States or the several states, or any foreign country, or any governmental agency. Should Force Majeure occur, the parties shall mutually agree on the terms and conditions upon which the Services may be continued.
8. **Termination:** This Contract may be terminated by either party upon thirty (30) days' written notice to the other party. Irrespective of which party terminates or the cause therefor, **Client** shall, within thirty (30) days of termination, compensate **MMI** for fees, charges for services, and costs incurred up to the time of termination, as well as those associated with termination activities. It is agreed, at any time after the total compensation payable to **MMI** under this Contract is met, that **MMI** shall have the right to suspend or terminate further performance or continuance of Services until **Client** and **MMI** have executed an extension to the contract or a new contract.
9. **Entire Contract:** This Contract constitutes the entire agreement, including herein-referenced proposal(s), attachments, and schedules, etc., between the parties and supersedes any and all prior written or oral agreements, negotiations, or understandings existing between the parties. This Contract may be amended only by written instrument signed by each party.
10. **Testimony:** Should **MMI** or any **MMI** employee be requested by any party or compelled by law to provide nonexpert testimony or other evidence with respect to the Services, and **MMI** is not a party to the dispute, **MMI** shall be compensated by **Client** for **MMI's** preparations, document retrieval, document reproduction, and testimony at **MMI's** current hourly rates. **MMI** shall provide expert witness testimony pertaining to any Services at premium rates of 1.5 times the then current hourly rates. **Client** agrees to reimburse **MMI** for reasonable travel, lodging, and meal expenses that are incurred in conjunction with providing either expert or nonexpert testimony or other evidence.
11. **Precedence and Survival:** This Contract shall take precedence over any inconsistent or contradictory provisions contained in any **Client**-issued purchase order, requisition, notice to proceed, or like document regarding the Services. All obligations arising prior to the termination of this Contract and all provisions of this Contract allocating responsibility or liability between **Client** and **MMI** shall survive the completion of Services hereunder and the termination of this Contract.
12. **Governing Law:** This Contract shall be governed by, construed, and interpreted in accordance with the laws of the State of Vermont, excluding any choice of law rules which may direct the application of the laws of any other jurisdiction.
13. **Claims, Disputes/Mediation:** For any claim, dispute, or other matter in question between parties to this Contract arising out of or relating to this Contract or breach thereof, the parties shall first attempt to resolve such issue through discussions between **MMI** and **Client**. Any claim or dispute not resolved per the above discussions shall be subject to and decided by and through the process of nonbinding mediation. Such mediation process shall be done by and through an independent court-certified mediator. All mediation proceedings, hearings, and meetings shall be held in Cheshire, Connecticut. Any unsettled claims, disputes, or other matters in question between parties not settled and agreed to by this process of mediation shall be subject to and decided by and through litigation.