



August 8, 2024

Town of Georgia  
47 Town Common Rd N  
Georgia, VT 05478

***RE: Falls Trail South Gully – Construction Engineering Agreement***

Dear Ken,

Watershed Consulting is pleased to provide this letter of engagement to complete construction engineering services for the Falls Trail South Gully. The project scope and fee are provided in the two RFP documents, *Falls Road Trail Stormwater Improvements (Georgia): Construction Management Services and cost proposal, dated July 19, 2024.*

The proposed payment schedule is as follows. Payments requests will be made to the Town on a lump sum, percent complete basis.

Kickoff	\$438
Finalize and issue bid documents	\$855
Facilitate pre-bid	\$798
Bid evaluation	\$780
Prepare contract documents	\$495
Permitting	\$230
Pre-construction conference	\$1,315
Construction observation and reporting	\$6,165
Final inspection and reporting	\$3,680

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**Project total:** **\$14,756**

No additional design work is included under this scope and fee. Additional design and any other requested items not accounted for under this scope and fee can be provided to the Town for add-on fee as mutually agreed.

Watershed Consulting standard terms and conditions are attached for reference and incorporated into this agreement.

Sincerely,



Andres Torizzo  
Principal

Agreed and accepted by the Town of Georgia \_\_\_\_\_

Date:

**WATERSHED CONSULTING ASSOCIATES, LLC  
STANDARD TERMS AND CONDITIONS**

1. **DEFINITIONS.** For purposes of these Standard Terms and Conditions (the “Terms and Conditions”) and any other Documentation (as defined below):
  - a. “Client” means the person or entity that submits and/or signs the Documentation for the purchase of Services and/or Materials from Watershed and such party’s officers, employees, agents and persons identifying as acting for, and with the authority of, Client.
  - b. “Contract” means the binding agreement for the provision of the Services and Materials as set forth in the Documentation.
  - c. “Documentation” means (i) the Contract and any quotation, proposal, scope of services, or sales/purchase order for the Services and/or Materials; (ii) these Terms and Conditions; and/or (iii) any other documentation containing the specifications of the Services and/or the Materials and other incorporated provisions governing the provision of the Services and/or the Materials.
  - d. “Materials” means the materials that Watershed is to provide to Client in accordance with the Documentation.
  - e. “Services” means the services that Watershed is to provide to Client in accordance with the Documentation.
  - f. “Watershed” means Watershed Consulting Associates, LLC and its successors or assigns.
2. **APPLICABILITY.** By receipt of these Terms and Conditions, Client agrees that the terms and conditions set forth herein shall be applicable to all Documentation covering the provision of Services and Materials to Client and any affiliated entities of Client and shall supersede all printed terms and conditions set forth in any Documentation or other services order confirmation used by Client. Watershed hereby objects to any terms and conditions appearing in Client’s services order confirmation that modify (materially or otherwise), contradict, or are in addition to the terms and conditions appearing herein. Client recognizes and acknowledges that Watershed’s acceptance of the Documentation is expressly limited to the terms contained herein, unless otherwise specifically agreed to by Watershed in a signed writing and Client agrees that any terms, conditions or provisions in any printed matter supplied by Client which are inconsistent with any terms contained herein, including any statement that purports to reject additional or varying terms of the Documentation, or which limit acceptance to the terms contained in any Client’s order confirmation are null and void and of no force and effect.
3. **PAYMENT TERMS.** Payment for Services and Materials provided under the Contract shall be made in U.S. dollars at the prices and time stipulated therein. All payment terms are subject to credit approval by Watershed. Client shall be liable for interest on late payments at the rate of one and one-half percent (1.5%) per month (or at the highest rate allowed by law in the event that such amount exceeds the amount allowed by law) on any unpaid balance. Payment of the interest does not release Client from its obligation to make payments on the agreed dates or from any obligation to pay damages which might exceed the interest due. Payments shall be made by Client in accordance with the terms set forth in the Contract, without any deduction for cash discount, expenses, taxes, levies, fees, duties, and the like, unless otherwise agreed by Watershed in writing.
4. **CLIENT’S FINANCIAL STATUS.** If before completion of performance of the Contract by Watershed, Client becomes bankrupt, insolvent, or makes an assignment for the benefit of creditors, Watershed may, at its option, terminate the Contract by giving to Client a written notice of termination and Watershed shall thereupon be relieved of any further obligations to Client. Client shall reimburse Watershed for its time, labor, material, and overhead costs and a reasonable allowance for profit for the work terminated. Client hereby represents to Watershed that Client is not insolvent.
5. **DELAYS / FORCE MAJEURE.** Watershed shall endeavor to meet Client’s request for delivery dates and schedule dates as shown on the Contract; however, any requested date is only approximate and Watershed shall incur no liability whatsoever for any default or delay caused by any condition beyond Watershed’s control, including, but not limited to, weather, acts of God, pandemic, epidemic, strikes, walkouts, boycotts or other labor trouble, war, riot, fire, flood, any statute, regulation, rule ordinance or order of any governmental agency, or delays by Watershed’s subcontractors or suppliers in furnishing materials, labor or supplies. During any period in which materials or labor required are limited, whether caused by the circumstances described above or otherwise, Watershed may allocate any available materials and/or labor amongst its customers on such basis as Watershed deems fair and reasonable in its discretion.
6. **TECHNICAL DATA.** All of Watershed’s technical data as furnished by Watershed to Client is the property of Watershed. Watershed retains all patent, trade secret, copyright, and other proprietary rights, including exclusive rights as to use and/or manufacture and/or sale. Technical data is to be reviewed only by authorized personnel of Client. Watershed does not convey any permission to show, reproduce or manufacture materials shown on any such technical data sources. If requested by Watershed, Client shall execute and deliver a confidentiality agreement to Watershed in form and substance satisfactory to both Client and Watershed. The absence of such confidentiality agreement, however, shall in no way relieve Client of its, and its agents and representatives’, obligations hereunder to hold the information specified herein in strict confidence.
7. **CHANGES IN WORK.** Watershed will proceed with changes in work upon Watershed’s written acceptance of a written change order from Client specifying the requested change and containing an agreed upon price and delivery schedule adjustment. Watershed’s election to proceed without such prior written change order in any instance shall not be deemed a waiver of Watershed’s right to receive price and schedule adjustments or to insist upon prior written orders for any subsequent changes in work.
8. **WARRANTY.** Watershed represents and warrants to Client that it will perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. Any claim under this warranty must be report by Client to Watershed in writing within 30 days following the performance of the Service giving rise to the claim. Client’s sole and exclusive remedy and the entire liability of Watershed under this limited warranty will be, at Watershed’s option, either reperformance of the applicable Service or refund to Client of all pre-paid, unused fees for the Services giving rise to the claim.
9. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 8, ALL SERVICES AND MATERIALS ARE PROVIDED “AS IS” AND WATERSHED HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND WATERSHED SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE.
10. **LIMITATION ON LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS AND CONDITIONS, THE DOCUMENTATION OR THE CONTRACT, WATERSHED IS NOT LIABLE, WHETHER BASED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR: LOSS OF USE, REVENUE, SAVINGS, PROFIT, INTEREST, GOODWILL OR OPPORTUNITY, COST OF CAPITAL, COSTS OF REPLACEMENT OR SUBSTITUTE USE OR PERFORMANCE, LOSS OF INFORMATION OR DATA, LOSS OR DAMAGE TO

PROPERTY OR EQUIPMENT, CLAIMS ARISING FROM CLIENT'S THIRD PARTY CONTRACTS, OR FOR ANY TYPE OF INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE. WATERSHED'S MAXIMUM LIABILITY UNDER THESE TERMS AND CONDITIONS, THE DOCUMENTATION AND THE CONTRACT IS THE ACTUAL PRICE ALLOCABLE IN THE CONTRACT TO ANY MATERIALS OR SERVICES ALLEGED TO BE THE CAUSE OF ANY LOSS OR DAMAGE. THE LIMITATIONS OF LIABILITY IN THESE TERMS AND CONDITIONS REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES. CLIENT AGREES THAT THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION 10 PREVAIL OVER ANY CONFLICTING TERMS AND CONDITIONS IN THESE TERMS AND CONDITIONS, THE DOCUMENTATION AND THE CONTRACT AND MUST BE GIVEN FULL FORCE AND EFFECT, WHETHER OR NOT ANY OR ALL SUCH REMEDIES ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS ARE EFFECTIVE EVEN IF WATERSHED HAS BEEN ADVISED BY CLIENT OF SUCH DAMAGES. THE WAIVERS AND DISCLAIMERS OF LIABILITY, RELEASES FROM LIABILITY AND LIMITATIONS ON LIABILITY EXPRESSED IN THIS SECTION 10 EXTEND TO WATERSHED'S AFFILIATES, PARTNERS, PRINCIPALS, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS, AGENTS AND SUCCESSORS AND ASSIGNS.

11. **COMPLIANCE WITH LAWS.** The parties agree to comply with all applicable laws and regulations, including but not limited to those relating to the Services and the Materials.
12. **DISPUTE RESOLUTION.** The parties agree that if any dispute under the Documentation develops between the parties, other than over Watershed's right to payment thereunder, the parties' respective management teams will first work together to resolve the dispute. If, after a period thirty (30) days, the parties are unable to resolve such dispute, the parties may exercise all other rights and remedies at a law and in equity.
13. **CANCELLATION.** Client may not cancel or terminate any Contract unless otherwise specifically provided for in the Contract. In the event Watershed receives a timely cancellation notice in accordance with terms set forth in the Contract, in addition to any other applicable provisions in the Contract, Client shall pay a cancellation charge equal to Watershed's billable time for labor, material, and overhead costs to the date of receipt of Client's written cancellation notice, plus Client's profit that would have been earned absent any such cancellation. Any other cancellation by Client shall constitute a breach of contract and default hereunder.
14. **LIMITATIONS PERIOD.** No legal action, regardless of form, arising out of the Contract shall be brought more than one (1) year after the occurrence of the event giving rise to such cause of action.
15. **APPLICABLE LAWS.** These Terms and Conditions, and any agreement resulting from the same, shall be governed by and construed in accordance with the laws of the State of Vermont without regard to the conflicts of laws rules thereof. The UN Convention on Contracts for The International Sale of Goods shall not apply to this Agreement. Buyer agrees to waive its rights to a trial by jury in any dispute under this Agreement. The parties hereby submit to the jurisdiction of any Vermont state or federal court sitting in Chittenden County, Vermont over any action or proceeding arising out of or relating to this Agreement, and each party hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such Vermont state or federal court.
16. **SEVERABILITY.** If any provision of these Terms and Conditions and/or any Documentation is found to be illegal or unenforceable, the remaining provisions shall remain in full force and effect.
17. **WAIVER.** Failure by either party to require compliance with any provision of these Terms and Conditions or any other Documentation shall not constitute a waiver of the right to later enforce in full that or any other portion of these Terms and Conditions.
18. **ASSIGNMENT.** No obligation or right of Client under the Documentation may be assigned without Watershed's prior written consent. Watershed may subcontract with others to provide the Services required by Watershed and/or may assign its rights and duties under the Documentation without Client's consent to one or more of its subsidiaries, to any lender in a financing transaction and to any person or entity which purchased Watershed's business or into which Watershed is consolidated.
19. **CONFIDENTIAL INFORMATION.** Client shall not, during the period covered by these Terms and Conditions or at any time thereafter, use for Client's own purposes, or disclose to or for the benefit of any third party, any trade secret or other confidential information as provided to Client by Watershed or which Client becomes aware (except as may be required by law). Further, Client shall not disclose the terms of these Terms and Conditions, the Documentation or the Contract to any third party.
20. **NOTICE.** All notices required to be provided for shall be made in writing and hand delivered or sent by first class mail to the address provided by Client or to Client's address contained in any inquiry forwarded by Client to Watershed. All notices required to be provided to Watershed shall be sent by certified mail, addressed to Watershed at 208 Flynn Ave #2h, Burlington, Vermont 054011, or to such other address which Watershed may hereafter specify to Client in writing. All notices between Client and Watershed shall be deemed to have been given when (i) received or three (3) days after deposit in the mail as specified above, whichever is earlier; or (ii) delivered, if hand delivered.
21. **COMPLETE AGREEMENT; AMENDMENT.** The terms and conditions stated under the Documentation constitute the full and final expression of the parties' agreement. No statements or agreements, oral or written, made prior to the date hereof shall vary or modify these written terms and no modification, amendment, waiver or release of any provision shall be effective unless in writing, signed by both parties, with a specific statement that it is intended as an amendment to a specified agreement or contract.
22. **ATTORNEYS FEES.** If Watershed incurs any expenses, including reasonable attorney's fees, to enforce the terms and conditions of these Terms and Conditions, the Contract and/or any Documentation, Watershed shall be entitled to recover said expenses from Client.
23. **NO THIRD PARTY BENEFICIARY.** These Terms and Conditions are between Watershed and Client only. There are no third party beneficiaries of any of the terms or conditions hereunder, and all Services provided hereunder are performed solely for the benefit of Client.
24. **ELECTRONIC SIGNATURE.** The use of an electronic signature in accordance with applicable law is a permissible substitute for a hand written signature.