

AGREEMENT BETWEEN CLIENT AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement effective as of 2/16/2024 ("Effective Date") between **Town of Eliot** ("CLIENT") and **Tidewater Engineering & Surveying, Inc.** ("ENGINEER"). CLIENT retains ENGINEER to perform professional services in connection with 510 River Road - Murray-Rowe Park in Eliot, ME (Assignment).

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

I. ENGINEERING SERVICES

For the agreed compensation amount, ENGINEER agrees to perform the services described in Section III. Scope of Work. ENGINEER to begin work on the assignment upon receipt of a signed agreement and retainer. Time of completion is weather dependent due to the winter season.

II. COMPENSATION AMOUNTS

CLIENT herein agrees to pay ENGINEER a lump sum fee of \$7,000 (Seven Thousand Dollars), plus costs and expenses, for the services described in Section III below. Costs and expenses may include, but is not limited to, fees for obtaining copies of unrecorded plans, registry of deed fees, mileage and field supplies.

III. SCOPE OF WORK

Summary: The CLIENT has requested that an existing conditions survey be prepared of Murray-Rowe Park. Said plan will depict all existing development including but not limited to the baseball field, soccer field, parking lot, outbuildings, duguuts, fences, drainage structures, topography, boundary lines and wetland limits. Cost of wetland delineation to be paid for by the Town directly to wetland scientist outside of this agreement.

The following tasks shall be completed by ENGINEER:

- Conduct research at the Registry of Deeds, local Town Office and other locations (if necessary) to gather public record information for the subject property and abutters.
- Perform a field survey to find and locate boundary evidence and other physical features that are pertinent to a boundary retracement and existing conditions survey.
- Download and analyze data collected in the field.
- Review and compare public record information with field data and make a boundary retracement determination.
- Generate a plan certified by a Professional Land Surveyor licensed in the State of Maine that depicts the boundary locations and existing conditions.

The existing conditions survey will be used as the base plan for the evaluation and development of design plan that depict capital improvements to the property. Design of said improvements is not included in this agreement but will be provided in a future phase to be agreed upon by ENGINEER AND CLIENT.

IV. DISCLAIMERS

1. CLIENT authorizes ENGINEER to enter upon the property to perform said services at any time or day.
2. Monumentation, as called for in relevant documentation, can be found and readily identified in the immediate lot area.
3. CLIENT acknowledges that vegetation may need to be cut in order to perform requested services.
4. All historical documents or plans the CLIENT has or has knowledge of shall be provided to ENGINEER prior to the work being performed. ENGINEER may make copies for their records.
5. The services provided are based upon current laws and regulations in effect at the time of this contract only.
6. A written surveyor's report is excepted from this scope of work.

V. SERVICES NOT INCLUDED

1. Civil engineering design services (may be provided under a separate agreement).
2. Cost to record plan at the Registry of Deeds (if requested by CLIENT).
3. Setting new property corners where missing.
4. Wetland or soil evaluations.
5. Septic design services.
6. Permitting assistance or preparation.
7. Engineering services.
8. Any other service not specifically described in Section III Scope of Work.

VI. STANDARD TERMS AND CONDITIONS


The ENGINEER shall use the same care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

1. ENGINEER is an independent contractor.
2. Invoices are due and payable within 15 days after receipt of ENGINEER's invoice; therefore, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said fifteenth day. ENGINEER may after 7 days' notice to CLIENT suspend services until ENGINEER has been paid in full for all amounts due for services. **All invoices must be paid in full prior to releasing the final stamped plans to the CLIENT.**
3. To the fullest extent permitted by law, the total liability, in the aggregate, of ENGINEER or ENGINEER's officers, directors, employees, agents, and consultants, or any of them to client and anyone claiming by, through, or under client, for any and all injuries, claims, losses, damages and expenses, whatsoever arising out of, resulting from, or in any way related to ENGINEER's services, the project or this agreement, from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability, misrepresentation, breach of contract or warranty, express or implied, of ENGINEER or ENGINEER's officers, directors, employees, agents, and consultants, or any of them, shall not exceed the total amount of the fee received by the ENGINEER for services performed under this agreement.
4. Dispute Resolution – CLIENT and ENGINEER agree that they shall first submit any and all claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes") to non-binding mediation prior to the initiation of legal proceedings. Mediation shall commence within thirty (30) days of the notice of claim, counterclaim, dispute or other matter, unless the CLIENT and ENGINEER mutually agree in writing to a different commencement date. Mediation shall be before a single mediator. CLIENT and ENGINEER shall submit non-confidential mediation statements fourteen (14) days prior to the mediation. CLIENT and ENGINEER shall each attend the mediation. Mediation shall be completed within sixty (60) days of notice of the claim, counterclaim, dispute or other matter. This provision shall survive completion or termination of this Agreement; however, neither CLIENT nor ENGINEER

shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

5. To the fullest extent permitted by law, CLIENT and ENGINEER each agree to indemnify and hold each other harmless from liability for losses, damages or expenses arising from third party claims to the extent caused by each party's respective negligence relating to this Agreement. In the event the losses, damages, or expenses are caused by the joint or concurrent negligence of the CLIENT and ENGINEER, they shall be borne by each party in proportion to its own negligence or other negligent entities and individuals.
6. Termination of Agreement - Either CLIENT or ENGINEER may at any time, upon seven days prior written notice in certified mail, return receipt requested to the other party, terminate this Agreement. Upon such termination, CLIENT shall pay to ENGINEER all amounts owing to ENGINEER under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs to the ENGINEER, within thirty (30) days of receipt of the written notice.
7. Force Majeure – ENGINEER shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond ENGINEER's reasonable control.
8. Documents, including but not limited to electronic documents and digital renderings, prepared or furnished by ENGINEER under this Agreement shall not be re-used by CLIENT or anyone by or through CLIENT without the express written consent of ENGINEER. ENGINEER shall retain an ownership interest therein in the documents prepared or furnished by ENGINEER. Any reuse of these documents is at the sole risk of CLIENT or reusing party. CLIENT agrees to indemnify, and hold ENGINEER harmless from all claims, damages, and expenses including attorney's fees and costs, arising out of such reuse of documents by CLIENT or by others acting by or through CLIENT.
9. Controlling Law - This Agreement is to be governed by Maine law.
10. CLIENT's sole remedy against ENGINEER AND ENGINEER'S officers, directors, employees, agents, and consultants, shall be limited to Tidewater Engineering & Surveying, Inc.

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

CLIENT:
 Signed: 
 Print Name: Michael W. Sullivan
 Title: Town Manager
 Date Signed: 2.20.2024

ENGINEER:
 Signed: Ryan M. McCarthy
 Print Name: Ryan M. McCarthy
 Title: President
 Date Signed: February 16, 2024

Address for giving notices:
1333 State Road
Eliot, Maine 04890

Address for giving notices:
1021 Goodwin Road Unit 1
Eliot, ME 03903