

July 11, 2022

Town of Boonsboro  
c/o Paul Mantello  
21 N Main St  
Boonsboro MD 21713  
[townmanager@townofboonsboro.com](mailto:townmanager@townofboonsboro.com)  
301-473-3123

RE: Landscape Design for Main St

Dear Mr. Mantello,

Thank you for the opportunity to work with you on this project located along Main St. in the town of Boonsboro. The project shall be located in the public right of way or town owned property. This plan will identify areas for proposed landscaping and include some pictures for reference of the proposed plants.

We have listed several exclusions in this proposal but would be more than happy to assist the client with obtaining proposals for any additional work not expressly included in this scope. The exclusions are primarily items that we do not provide services for or are items we do not believe are required to permit this project. A complete scope of work is provided below.

### **SCOPE OF WORK**

#### **PART I – SURVEY, DATA COLLECTION AND BASEMAP**

1. Develop topographic base map for use in the landscaping plan and field verify.
2. The plans will be prepared using the county aerial and survey to supplement detailed info.

#### **PART II – CONSTRUCTION DRAWINGS**

1. Design concept plan in conjunction with the plans provided by the client to insure the layout of the project meets client needs.
2. Revise the plan per input from the client
3. Prepare an exhibit for the client to present to the board.
4. Make any changes based on the input from the board to finalize the exhibit.
5. FSA anticipates one (1) initial design and up to two (2) revisions in order to finalize the layout.

### **WORK NOT INCLUDED**

1. Submit or apply for any Maryland State Highway (MD SHA) permits.
2. FSA anticipates several client meetings and will include these meetings in the price within reason. If meetings are excessive and create a hardship for FSA, such as weekly or bi-weekly progress meetings, additional fees may have to be assessed. FSA typically bills hourly for meetings outside of the anticipated scope of work.
3. ALTA surveys, Easements or additional survey work not expressly included.
4. As-built surveys, plans and documents related to closing of post development bonds, etc. An estimate for this work can be provided during or after construction.

5. Forest Conservation plan. It is assumed that this plan will be exempt from forest conservation.
6. Preparations of specifications beyond those notes and design specifications included on the necessary landscape plan.
7. Subsurface Utility Engineering – FSA is not responsible for subsurface utility locations, therefore our scope of work does not address ASCE Standard 38-02. We recommend client discuss these standards with a SUE Professional

**COMPENSATION AND FEES**

Our estimated fee for the above work is:

Part I –	BASEMAP	\$ 4,200.00
Part II –	Construction Drawings	\$ 6,800.00
<b>TOTAL</b>		<b>\$ 11,000.00</b>

This estimate does not include fees which will be paid to other consultants (i.e. geotechnical, traffic, etc.) or fees paid to agencies. This estimate is for work performed by FSA.

This figure includes all work and materials except the cost of any review fees, filing fees, permit fees, bid advertisement or prints. All permits and filing fees and prints will be billed at cost.

Copy Size	Copy Cost	Mylar Copy Cost	Color plot on 800 HP plotter	CAD plot on bond	Color CAD plot on bond	CAD plot on mylar
18" x 24"	\$2.00	\$3.60	\$12.00	\$6.00	\$10.00	\$7.50
24" x 36"	\$3.50	\$7.25	\$24.00	\$12.00	\$20.00	\$15.00
30" x 42"	\$5.00	\$9.25	\$35.00	\$17.50	\$29.25	\$21.50
36" x 48"	\$7.00	\$12.75	\$48.00	\$24.00	\$40.00	\$30.00

\*CAD plots on translucent bond will be used for producing prints for interim agency review submittals. If the above is acceptable to you, please sign at the bottom where indicated. Return one signed set to us for our files. Please call and inform us when we may begin.

Very truly yours,

FREDERICK, SEIBERT AND ASSOCIATES, INC.



Adam Hager  
Project Manager

.....

The "Compensation & Fees" above outlined meet with my and/or our approval and you are hereby authorized to proceed with the work. I have read and agreed to the "Terms & Conditions" listed below.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

## **TERMS & CONDITIONS**

### **Standard of Care:**

FSA's services shall be provided consistent with and limited to the standard of care applicable to such services, which is that FSA shall provide its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar conditions and at the same point in time. Such standard of care is not a warranty or guarantee and FSA shall have no such obligation. Accordingly, Client should prepare and plan for clarifications and modifications which may impact both the cost and schedule of the Project.

### **Scope of Services:**

For the fees defined under this Agreement, FSA shall perform the services specifically described in Scope of Work (SOW) on the proposal. Any services required of FSA, not described in SOW, shall be performed only in accordance with the additional scope and fees outlined in a written agreement signed by both FSA and Client. Under no circumstances is FSA required to perform any additional services until a written agreement covering these services is finalized. In addition, if the overall project or FSA'S services are suspended by Client for more than 30 calendar days, Client is deemed to be in default under this Agreement and FSA may terminate this Agreement or may renegotiate its total fees required to complete its services.

Unless specifically included under the scope of services described above, neither FSA nor its sub consultants (if any) shall assume any liability for the following:

- Construction means and methods (including monitoring or inspections of any kind)
- Project scheduling and sequencing
- Budgeting, quantity opinions, or cost estimates
- Construction management
- Permitting
- Geotechnical engineering or any other analysis or testing of subsurface conditions (including soils and the location of any utilities or structures not visible on the surface)
- Identification or advice pertaining to any hazardous conditions, including but not limited to asbestos, petroleum, radioactive materials, hazardous waste, wetland delineation or other environmentally sensitive areas
- Environmental Site Assessments
- Job site safety or OSHA compliance
- Compliance with the Americans with Disabilities Act of 1990 (ADA)

### **Right of Entry & Permits:**

Client agrees to provide FSA with all access and right of entry to the site to perform its services in a timely manner. All necessary permits and permission to access the site shall be the sole responsibility of the Client.

### **Approvals:**

Client acknowledges that the approval process necessary to estimate or maintain a project timeline is both unpredictable and outside of the FSA's control. FSA does not guarantee approvals by any governing authority or outside agency, nor the ability to achieve or maintain any project timeline.

Should any rules and regulations change during the life of the contract, and should the regulations require additional work by Frederick, Seibert & Associates, Inc. (FSA) in order to comply with same, then the estimated cost will need to be readjusted to reflect the extra work required by the new regulations.

**Site Visitation:**

In the event FSA's scope of services listed above shall include periodic site visits during the construction phases, FSA shall be serving only in the capacity as a consultant to advise Client on issues involving progress and general design compliance. FSA does not assume any responsibility for the quality, sequences, techniques or timeliness of any contractor's work, job site safety, continuous on-site inspections, or any issues that fall outside of the FSA's scope of services as defined in this Agreement

**Indemnification:**

FSA and Client each agree to indemnify the other (including their respective owners, officers and employees) from all claims, including reasonable attorney's fees, arising out of and only to the extent caused by the other party's negligence. In addition, Client agrees to indemnify FSA, including reasonable attorney's fees, for any and all claims arising from work performed by any third party hired by the Client or resulting from any outside information provided by Client to FSA which was incorporated into the FSA's services.

(Optional) FSA shall carry throughout the performance of its services under this Agreement, the following insurance coverage:

- Commercial General Liability – Limit of \$1,000,000 per occurrence
- Automobile Liability (including coverage for hired & non-owned autos) – Limit of \$1,000,000 per occurrence
- Workers' Compensation – Statutory Limits
- Professional Liability – Limit of \$2,000,000 per claim.

**Risk Allocation**

To the fullest extent allowed by law, FSA's total liability to the Client for all claims or expenses (legal or otherwise) arising from this project or under this Agreement shall not exceed the total amount of FSA's fees listed in this Agreement or \$50,000, whichever is greater. In addition, no employee or agent of FSA shall have any individual liability to the Client in addition to, or in excess of, the FSA's liability under these terms and conditions.

**Ownership of Documents and Assignment:**

Client acknowledges that all documents, drawings, reports or correspondence of any kind ("Design Documents") relating to the FSA's services under this Agreement are specific to this project, the Client, and this Agreement. FSA grants to Client a nonexclusive license to use FSA's Design Documents solely for purposes of construction, using and maintaining the project, provided that the Client substantially performs its obligations under the this Agreement, including prompt payment of all sums when due.

Under no circumstances may the Client assign, transfer, or sublet its rights under this Agreement to any other party without first receiving the express written consent of the FSA. Client agrees to indemnify FSA for any and all claims, including reasonable defense costs, arising from the Client's assignment, reuse, modification or misuse of FSA's work without the FSA's prior written consent.

**Compensation:**

Upon receipt of an invoice from FSA for services as described in SOW, Client shall pay the invoice, in its entirety within 30 calendar days. In the event that Client disputes FSA's invoice, it must notify FSA, in writing, within 7 calendar days from the date of the invoice. Interest shall accrue on any balances uncollected after 30 days at a rate of 1.5% per month. In the event that the Client fails to pay within the initial 30 day period, Client is deemed to be in default of this Agreement and FSA may immediately stop work and withhold all project deliverables until the balance due, including any accrued interest, is paid in full.

Client shall also reimburse FSA for all collection costs, including but not limited to legal or collection agency fees, court costs, travel and other related expenses. Client's obligation to pay all collection costs shall survive this Agreement.

**Early Identification of Disputed Issues:**

Client shall promptly review Consultant's invoice upon receipt and shall notify Consultant of any dispute or any portion of such invoice within ten days of receipt. Any dispute identified thereafter shall not be a basis to withhold any payment except as agreed by the Parties or as determined pursuant to the dispute resolution procedures provided for at the end of the Project.

**Payment of Other Engineers/Design Professionals:**

In the event this Agreement includes continuation of work begun by other architects, engineers, planners, surveyors, or professionals, FSA may suspend its services until Client makes arrangements satisfactory to such other design professionals for payment. If satisfactory arrangements have not been made within a time determined by FSA to be reasonable, then FSA may in its sole discretion terminate this Agreement.

**Claims / Certificate of Merit:**

In the matter of interpretation, enforcement, and performance of this agreement, the laws of the State of **Maryland** shall apply. Client agrees it will assert no claim for professional negligence, either directly or in a third party claim, against FSA, unless Client as a strict condition precedent, first provides FSA with a written certification executed by an independent design professional currently practicing in the same state and discipline as FSA. This written "Certificate of Merit" shall (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care of a professional performing professional services under similar circumstances, in a similar locality, and at a similar point in time; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to this professional standard of care.

This Certificate of Merit shall be provided to the FSA not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration, mediation, or judicial proceeding and shall take precedence over any existing state law in force at the time of the claim or demand for arbitration, mediation, or judicial proceeding.

**F frivolous Suit or Counterclaim**

In the event the Client makes a claim (or counterclaim) or brings an action against the FSA for any act arising out of the performance of the services hereunder, and the Client fails to prove such a claim or action, then the Client shall pay all legal and other costs incurred by the FSA in defense of such claim or action.

**Containment Clause:**

Consultant's services shall be limited to those expressly set forth in this Agreement and Consultant shall have no other obligations or responsibilities for the Project except as agreed to in writing or as provided in this Agreement.

**Mutual Waiver of Consequential Damages:**

Client and FSA waive consequential damages for claims, disputes or other matters in question arising out of or related to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the termination provisions of this Agreement.

**Termination:**

Either Client or FSA may terminate this agreement, without cause, after providing the other party with 30 days written notice.

In the event that Client believes it may have a reason to terminate FSA for cause, it must first cite its reasons, in writing, then provide FSA with 10 calendar days, following receipt of notice, to cure its default. In the event that FSA fails to cure its default, Client may terminate this Agreement

In the event of any termination, regardless of cause, Client shall immediately pay FSA all outstanding fees, including reimbursable expenses due to FSA, due through the date of termination.

**No Third Party Beneficiary Rights:**

This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except as otherwise expressly provided for in this Agreement.

**Time Extensions and Excusable Delays**

A time extension will be granted to FSA for delays caused by a) the Client, its contractors, its agents, representatives, and Client's other consultants; and b) "Excusable Delays" which are defined as any delays or work stoppages caused by *force majeure* and/or occurrences beyond FSA's control, including acts of God, acts of terrorism or war, fires, unusually severe weather, floods, epidemics, strikes, quarantine restrictions, and acts of Government authority.

Additionally, FSA shall not be liable to Client or any of its contractors, its agents, representatives, or Client's other consultants for any delays or work stoppages caused by Excusable Delays.