

AGREEMENT FOR ENGINEERING SERVICES
BY AND BETWEEN THE
TOWN OF BUCKLAND, MASSACHUSETTS
AND
WESTON & SAMPSON ENGINEERS, INC.

THIS AGREEMENT is made this _____ day of _____, 2021, by and between _____, acting herein by and through its _____, hereinafter called the OWNER and WESTON & SAMPSON ENGINEERS, INC., with offices at 712 Brook Street, Suite 103, Rocky Hill, Connecticut 06067, hereinafter called the ENGINEER.

WITNESSETH, for the consideration hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1 - ENGAGEMENT OF THE ENGINEER AND STANDARD OF CARE

1.1 THE OWNER hereby engages the ENGINEER, and the ENGINEER hereby accepts the engagement to perform certain professional engineering services entitled:

Design Engineering and Permitting Services
Charlemont Road Crossing Replacement Project

hereinafter called the PROJECT.

1.2 The ENGINEER's services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. The ENGINEER makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.

ARTICLE 2 - SCOPE OF SERVICES

See Attachment A

ARTICLE 3 - RESPONSIBILITIES OF THE OWNER

The OWNER, without cost to the ENGINEER, shall do the following in a timely manner so as not to delay the services of the ENGINEER:

3.1 Designate in writing a person to act as the OWNER 's representative with respect to work to be performed under this AGREEMENT, such person to have complete authority to transmit instructions, receive information, interpret and define the OWNER'S policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this AGREEMENT.

3.2 Through its officials and other employees who have knowledge of pertinent conditions, confer with the ENGINEER regarding both general and special considerations relating to the PROJECT.

- 3.3 Assist the ENGINEER by placing at the disposal of the ENGINEER, all available information pertinent to the PROJECT including previous reports and any other data relative to design or construction of the PROJECT.
- 3.4 Pay all application and permit fees associated with approvals and permits from all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from others as may be necessary for completion of the PROJECT.
- 3.5 Arrange for access to and make all provisions for the ENGINEER to enter upon public and private lands as required for the ENGINEER to perform its work under this AGREEMENT.
- 3.6 Furnish the ENGINEER all needed property, boundary and right-of-way maps.
- 3.7 Cooperate with and assist the ENGINEER in all additional work that is mutually agreed upon.
- 3.8 Pay the ENGINEER for work performed in accordance with the terms specified herein.
- 3.9 Attend the pre-bid conference, bid opening, pre-construction conference, construction progress and job-related meetings, substantial completion inspections and final payment inspections.
- 3.10 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services or any defect or non-conformance of the work of any Contractor(s).
- 3.11 Submit to ENGINEER the proposed language of certifications, affidavits and/or assignments requested of ENGINEER or ENGINEER's independent contractors and consultants for review and approval at least 14 days prior to execution. OWNER shall not request certifications and/or affidavits that would require expertise, knowledge or services beyond the scope of this AGREEMENT.

ARTICLE 4 - TIME OF PROJECT

- 4.1 The ENGINEER will initiate work under this AGREEMENT following formal acceptance of this AGREEMENT by the OWNER. The ENGINEER agrees to provide services for the estimated duration of work, starting within 14 calendar days of the signing of this AGREEMENT and will complete Task 1 thru 3 by June 30, 2022.
- 4.2 If the specific periods of time for services provided under this AGREEMENT are changed through no fault of the ENGINEER, the rates and compensation provided for herein shall be subject to equitable adjustment.

4.3 If ENGINEER's services are delayed or suspended in whole or in part by the OWNER for more than three months through no fault of the ENGINEER, ENGINEER shall be entitled to an equitable adjustment of the rates and compensation to be paid herein.

ARTICLE 5 - PAYMENTS TO THE ENGINEER

5.1 For services performed under this AGREEMENT, the OWNER agrees to pay the ENGINEER the total lump sum fee as indicated in Table 5.1 below for the scope of services described in Article 2 of this AGREEMENT. Fees for this PROJECT shall be billed monthly as they accrue based upon the services performed as a percent of the total lump sum fee. The OWNER agrees to make payment to the ENGINEER within thirty (30) days of the invoice date.

Task	Description	Fee
1	Field Data Collection	\$8,000
2	Engineering and Design	\$66,700
3	Permitting	\$14,000
TOTAL FEE		\$88,700

5.2 If the OWNER fails to make any payment due the ENGINEER for services and expenses within thirty (30) days after receipt of the ENGINEER'S statement therefore, the ENGINEER may, after giving seven (7) days' written notice to the OWNER, suspend services under this AGREEMENT. Unless the ENGINEER receives payment within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the ENGINEER shall have no liability to the OWNER for delay or damage caused the OWNER because of such suspension of services.

ARTICLE 6 - INSURANCE

6.1 General Liability Insurance

The ENGINEER shall secure and maintain, for the duration of this PROJECT, the following General Liability Insurance policy or policies at no cost to the OWNER. With respect to the operations the ENGINEER performs, the ENGINEER shall carry Commercial General Liability Insurance for bodily injury, death, and property damage in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

6.2 Automobile Liability Insurance

The ENGINEER shall secure and maintain, for the duration of this PROJECT, Automobile Liability Insurance covering the operation of all motor vehicles, including those hired or borrowed, used by the ENGINEER in connection with this AGREEMENT, in the amount of \$1,000,000 combined single limit per accident.

6.3 Umbrella Liability Insurance

In addition to the above-mentioned coverage, the ENGINEER shall carry a minimum of One Million Dollar (\$1,000,000) umbrella liability policy for the duration of the PROJECT.

6.4 Professional Services Liability Insurance

The ENGINEER shall secure, at its own expense, a Professional Services Liability Insurance policy with a limit of \$3,000,000 per claim and in the aggregate, and maintain such policy for the duration of the PROJECT.

6.5 Workers Compensation Coverage

6.5.1 The ENGINEER shall maintain statutory Worker's Compensation insurance coverage for all of its employees at the PROJECT as required by the State of Massachusetts.

6.5.2 The OWNER shall maintain statutory Worker's Compensation insurance coverage for all of its employees at the PROJECT as required by the State of Massachusetts.

6.6 Additional Insured

OWNER shall be named an additional insured for insurance coverage included in Articles 6.1, 6.2 and 6.3 only.

ARTICLE 7 - LIMITATION OF LIABILITY AND INDEMNIFICATION

7.1 To the fullest extent permitted by law, the total liability in the aggregate, of ENGINEER and its officers, directors, employees, agents, and independent professional associates, and any of them, to the OWNER and any one claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of 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, breach of contract, misrepresentation, or breach of warranty of ENGINEER or its officers, directors, employees, agents or independent professional associates, or any of them, and any causes arising from or related to the COVID-19 pandemic, shall not exceed the total amount recoverable from the available limits of the insurance identified in Article 6. ENGINEER shall have no upfront duty to defend the OWNER but shall reimburse defense costs of the OWNER to the same extent of its indemnity obligation herein.

7.2 To the fullest extent permitted by law, and subject to the limitation of liability set forth in 7.1, the ENGINEER agrees to indemnify and hold harmless the OWNER and its officers, directors, employees, agents, and independent professional associates, and any of them, from any claims, losses, damages or expense (including reasonable attorneys' fees) arising out of the death of, injuries, or damages to any person, or damage or destruction of any property, in connection with the ENGINEER'S services under this AGREEMENT to the

extent caused by the negligent acts, errors, or omissions of the ENGINEER or its officers, directors, employees, agents or independent professional associates, or any of them.

7.3 Hazardous Waste Indemnifications

- 7.3.1 The ENGINEER and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous waste or viruses, including COVID-19, in any form at the PROJECT site. Accordingly, the OWNER hereby agrees to bring no claim for negligence, breach of contract, strict liability, indemnity, contribution or otherwise against the ENGINEER, its principals, employees, agents or consultants if such claim in any way arises from such services. The OWNER further agrees to defend, indemnify and hold the ENGINEER and its consultants and their principals, employees and agents harmless from and against any claims, demands, loss or damage (including reasonable attorneys' fees) sustained by any person or entity arising from such services or circumstances. The ENGINEER shall not be liable for any damages or injuries, of any nature whatsoever, due to any delay or suspension in the performance of its services caused by or arising out of the discovery of hazardous substances or pollutants at the PROJECT site or exposure of any parties to the COVID-19 virus.
- 7.3.2 The OWNER hereby warrants that, if he or she knows or has any reason to assume or suspect that hazardous materials, including materials or persons with viral contamination, may exist at the PROJECT site, he or she has so informed the ENGINEER. The OWNER also warrants that he or she has done his or her best to inform the ENGINEER of such known or suspected hazardous materials' type, quantity and location.
- 7.3.3 If, in the performance of the work, hazardous materials are encountered and are judged by the ENGINEER to be an imminent threat to on-site personnel and/or the general public, the ENGINEER shall take all steps immediately available which are, in his judgment, prudent and necessary to mitigate the existing threat. The OWNER agrees to compensate the ENGINEER for any time spent or expenses incurred by the ENGINEER to mitigate the threat, in accordance with the ENGINEER'S prevailing fee schedule and expense reimbursement policy.
- 7.3.4 The OWNER recognizes that special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program, implemented with appropriate equipment and experience with personnel under the direction of a trained professional who functions in accordance with the prevailing standard of care may fail to detect certain hidden conditions. For similar reasons, actual environmental, geological, and technical conditions that the ENGINEER properly inferred to exist between sampling points may differ significantly from those that actually exist. The passage of time also must be considered, and the OWNER recognizes that due to natural occurrences or direct or indirect human intervention at the Site or distance from it, actual conditions may quickly change.

ARTICLE 8 - EXTENSION OF SERVICES

8.1 Additional Work

In the event the ENGINEER, as requested by the OWNER, is to make investigations or reports on matters not covered by this AGREEMENT, or is to perform other services not included herein, additional compensation shall be paid the ENGINEER as is mutually agreed upon by and between the OWNER and the ENGINEER. Such services shall be incorporated into written amendments to this AGREEMENT, or into a new written AGREEMENT.

8.2 Changes in Work

The OWNER, from time to time, may require changes or extensions in the Scope of Services to be performed hereunder. Such changes or extensions, including any increase or decrease in the amount of compensation, to be mutually agreed upon by and between the OWNER and the ENGINEER, shall be incorporated into written amendments to this AGREEMENT.

8.3 Litigation Support Services

In the event the ENGINEER is to prepare for or appear in any litigation on behalf of the OWNER, additional compensation shall be paid the ENGINEER.

The OWNER agrees to compensate the ENGINEER for time spent and expenses incurred in preparation for and attendance at meetings and appearances, including depositions. This shall include appearances before the OWNER'S attorney and before the attorney of any other party to the litigation, in addition to all other support services as requested by the OWNER. Additional compensation shall be paid the ENGINEER as is mutually agreed upon by and between the OWNER and the ENGINEER. Such services shall be incorporated into written amendments to this AGREEMENT, or into a new written AGREEMENT.

8.4 Hazardous Materials Encountered

If, in the performance of the work, hazardous materials are encountered and are judged by the ENGINEER to be an imminent threat to on-site personnel and/or the general public, the ENGINEER shall inform the Local and State Emergency Personnel of the release. The OWNER agrees to compensate the ENGINEER for any time spent or expenses incurred by the ENGINEER to mitigate the threat, in accordance with the ENGINEER'S prevailing fee schedule and expense reimbursement policy. Such services shall be incorporated into written amendments to this AGREEMENT or into a new written AGREEMENT.

ARTICLE 9 - OWNERSHIP AND USE OF DOCUMENTS

- 9.1 The OWNER shall retain ownership of the documents submitted to the OWNER by the ENGINEER pursuant to this AGREEMENT. However, such documents are not intended or represented to be suitable for reuse by the OWNER or others on extensions of the PROJECT or on any other PROJECT. Any reuse or adaptation by the OWNER without written verification by the ENGINEER shall be at the OWNER'S sole risk and without liability or legal exposure to the ENGINEER or to the ENGINEER'S independent sub-consultants, and the OWNER shall indemnify and hold harmless the ENGINEER and the ENGINEER'S sub-consultants from all claims, damages, losses and expenses, including reasonable attorneys' fees arising out of or resulting therefrom. Any verification or adaptation performed by the ENGINEER shall entitle the ENGINEER to further compensation at rates to be agreed upon by the OWNER and the ENGINEER.

ARTICLE 10 – TERMINATION

- 10.1 The obligation to provide further services under this AGREEMENT may be terminated by either party upon ten (10) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- 10.2 If the PROJECT is suspended or abandoned in whole or in part for more than three (3) months, the ENGINEER shall be compensated for all services performed prior to receipt of written notice from the OWNER of such suspension or abandonment, together with other direct costs then due and all Termination Expenses as defined in Article 10.4. If the PROJECT is resumed after being suspended for more than three (3) months, the ENGINEER'S compensation shall be equitably adjusted.
- 10.3 In the event of termination by the OWNER under Article 10.1, the ENGINEER will be paid a percentage of the lump sum fee based on work completed on the PROJECT through the completion of services necessary to affect termination, in accordance with the provisions of Article 5 of this AGREEMENT.
- 10.4 In the event of termination by the ENGINEER under Article 10.1, or termination by the OWNER for the OWNER'S convenience, the ENGINEER will be paid a percentage of the lump sum fee based on work completed on the PROJECT through the completion of services necessary to affect termination, plus termination expenses. Payment for services will be in accordance with the provisions of Article 5 of this AGREEMENT. Termination expenses means additional costs of services and other direct costs directly attributable to termination, which shall be an additional amount computed as the costs the ENGINEER reasonably incurs relating to commitments, which had become firm before the termination.

ARTICLE 11 - GENERAL PROVISIONS

11.1 Precedence

The terms and conditions in this AGREEMENT shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document regarding the ENGINEER'S services.

11.2 Severability

If any of the terms and conditions in this AGREEMENT shall be finally determined to be invalid or unenforceable in whole or part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this AGREEMENT to replace any such invalid or unenforceable provision with a valid enforceable provision that comes as close as possible to the intention of the stricken provision.

11.3 Mediation

All claims, disputes or controversies arising between the OWNER and the ENGINEER shall be submitted to non-binding mediation prior to and as a condition precedent to the commencement of any litigation between those parties. The American Arbitration Association, or such other person or mediation service shall conduct the non-binding mediation as the parties mutually agree upon. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this AGREEMENT and the American Arbitration Association or such other person or mediation service as the parties mutually agree upon. The costs of mediation shall be borne equally by the parties. All statements of any nature made in connection with the non-binding mediation shall be privileged and will be inadmissible in any subsequent court or other proceeding involving or relating to the same claim. The parties may engage in remote mediation if in-person mediation is not possible or practicable due to the COVID-19 pandemic, or if mutually agreed upon between the parties.

11.4 Subrogation

The OWNER and the ENGINEER waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by any property or other insurance in effect whether during or after the PROJECT. The OWNER and the ENGINEER shall each require similar waivers from their contractors, consultants and agents.

11.5 Consequential Damages

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the ENGINEER, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make

any claim for incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty, including costs arising from the COVID-19 pandemic. Both the OWNER and ENGINEER shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in the Project.

11.6 Sole Remedy

Notwithstanding anything to the contrary contained herein, OWNER and ENGINEER agree that their sole and exclusive claim, demand, suit, judgment or remedy against each other shall be asserted against each other's corporate entity and not against each other's shareholders, A/E's, directors, officers or employees.

11.7 Third Party Obligations

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or the ENGINEER.

11.8 Statute of Limitations

Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of completion of services performed for acts or failures to act occurring prior to the date of completion of services performed or the completion date contained in this AGREEMENT for acts or failures to acts occurring after the date of completion of services performed. In no event shall such statutes of limitations commence to run any later than the date when the ENGINEER's services are substantially completed.

11.9 Opinions of Probable Construction Cost

The ENGINEER makes opinions of probable costs using its best judgement as an experienced and qualified professional engineer generally familiar with the construction industry. ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or the Contractor's methods of determining prices, or competitive bidding or market conditions or when the Project will be constructed. ENGINEER cannot and does not guarantee that Contractor's bids or actual construction costs will not vary from opinions of probable construction cost prepared by ENGINEER. If OWNER desires greater assurance as to probable construction cost, OWNER shall employ an independent cost estimator.

11.10 Changed Conditions

If concealed or unknown conditions that affect the performances of the services are

encountered, that are not ordinarily found to exist or that differ materially from those generally recognized as inherent in the services of the character provided for under this AGREEMENT or which could not have reasonably been anticipated, notice by the observing party shall be promptly given to the other party and, if possible before the conditions are disturbed. If the ENGINEER makes the claim, ENGINEER's schedule and compensation shall be equitably adjusted to reflect additions that result from such changed conditions.

11.11 Force Majeure

If delays or failures of performance of the ENGINEER are caused by occurrences beyond the reasonable control of the ENGINEER, the ENGINEER shall not be in default of this AGREEMENT. Said occurrences shall include Acts of God or the public enemy; expropriation or confiscation; compliance with any quarantine or other order of any governmental authority; pandemic; epidemic; public health crisis; labor or materials shortage; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots, strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by the ENGINEER, or any other causes which are beyond the reasonable control of the ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be compensated for all costs incurred in connection with or arising from a force majeure event or in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

ARTICLE 12 – DISCLOSURE RIGHTS

12.1 OWNER agrees the ENGINEER has the authority to use its name as a client and a general description of the project as a reference for other prospective clients.

ARTICLE 13 – NOTICES

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address that appears below, and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

Notices shall be provided to:

OWNER:

Name:

Title:

Address:

ENGINEER:

Name: Christopher Wester

Title: Vice President

Address: 712 Brook Street, Suite 103
Rocky Hill, CT 06067

ARTICLE 14 – CONTROLLING LAW


This Agreement is to be governed by the law of the principal place of business of the ENGINEER.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day and year first above written.

ACCEPTED FOR TOWN OF BUCKLAND:
INC.:

WESTON & SAMPSON ENGINEERS,

Authorized Signature



Christopher B. Wester, Vice President

Printed Name & Title

August 18, 2021
Date

Date

CERTIFICATION OF AVAILABLE FUNDS

Certification is herewith given that funds are available for payments required by the terms of this AGREEMENT.

By: _____
OWNER Accountant

Date: _____

APPROVED AS TO FORM:

By: _____
OWNER Counsel

Date: _____

A TRUE COPY, ATTEST:

By: _____
OWNER Clerk

Date: _____

OWNER'S Massachusetts Sales and Use Tax Certificate Exemption Number _____

ATTACHMENT A
Scope of Services
Charlemont Road Crossing Replacement Project

The Project Area is defined as Charlemont Road at the Taylor Brook culvert crossing. Utilizing existing base mapping previously developed, ENGINEER shall perform the following services:

Task 1 – FIELD DATA COLLECTION:

- A. Perform river substrate analysis to be used as a reference for the replacement crossing design.
- B. Perform longitudinal profile survey of the stream to locate existing stream features and elevations.

Task 2 – ENGINEERING AND DESIGN:

- A. Perform hydrologic study to determine watershed characteristics to calculate run-off volumes, time of concentration and peak discharge.
- B. Perform hydraulic analysis and prepare model of the crossing for water surface elevation, scour, and velocity.
- C. Prepare a detailed summary of structure types evaluated, and select/recommend a structure type upon which the final design shall be based. Study will consider site constraints, ease of construction, structure lifespan, potential for erosion and head cutting, stream stability and risk of stream channel adjustment, benefits to stream habitat, storm flow conveyance, potential to affect property or infrastructure, and cost of replacement.
- D. Prepare preliminary design plans and submit to OWNER for review. Comments received from OWNER shall be incorporated into the preliminary design plans.
- E. Perform hydraulic design for water surface elevation, scour, sediment transport, and velocity. Design the stream bed so that flow and hydraulic dynamics at the replacement structure are comparable to the upstream and downstream, meeting MassDOT standards where applicable.
- F. Perform structural design to meet needs of the road type, meeting MassDOT when applicable.
- G. Prepare construction details meeting MassDOT standards when applicable.
- H. Prepare final design plans and submit to OWNER for review and approval. Comments received from OWNER shall be incorporated into the final design plans.

Task 3 - PERMITTING:

- A. Prepare a Notice of Intent and attend up to two (2) meetings with the Conservation Commission.
- B. Submit Chapter 85, Section 35 MassDOT review and revise plans as necessary