

TOWN OF BUCKLAND, MASSACHUSETTS
BRIDGE PRESERVATION OF B-28-029 (5D5)
APPLE VALLEY ROAD OVER UPPER BRANCH CLESSON BROOK

AGREEMENT

THIS AGREEMENT made as of the 30 day of Aug in the year 2021 by and between the Town of Buckland, Massachusetts acting through its Town Administrator hereinafter called OWNER and J.H. Maxymillion Inc with legal address and principal place of business at 1801 East St. Pittsfield MA 01201 hereinafter called CONTRACTOR. OWNER and CONTRACTOR in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

1.1 CONTRACTOR shall perform the Work as specified or indicated in the Contract Documents. The Work is as described in the Special Provisions.

ARTICLE 2. ENGINEER

2.1 The Project has been designed by VHB, Inc., 101 Walnut Street, Watertown, Massachusetts 02472 who will act as ENGINEER in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1 The Contract Time shall commence to run on the twentieth day after the Effective Date of this Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. All activities necessary to fully complete the work shall be executed on or before December 31, 2021 in accordance with the agreement.

3.2 CONTRACTOR agrees that the Work shall be prosecuted regularly, diligently, and uninterruptedly and at such rate of progress as will ensure full completion thereof within the Contract Time stated above. It is expressly understood and agreed, by and between CONTRACTOR and OWNER that the Contract Time is reasonable for the completion of the Work, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

ARTICLE 4. CONTRACT PRICE

4.1 OWNER will pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds at the unit prices agreed upon in the CONTRACTOR's Bid Form attached to this Agreement.

ARTICLE 5. APPLICATIONS FOR PAYMENT

5.1 CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions of the Contract. Applications for Payment will be processed by ENGINEER as provided in the Conditions of the Contract.

ARTICLE 6. PROGRESS AND FINAL PAYMENTS

6.1 OWNER will make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, monthly during construction as provided below.

All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in Paragraph 15.01 of the General Conditions of the Contract.

6.2 OWNER will make progress and final payments as provided in Article 15 of the General Conditions of the Contract and in accordance with the applicable Massachusetts General Law.

ARTICLE 7. LIQUIDATED DAMAGES

7.1 OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the Contract Time specified in Article 3 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$500.00 per day for each calendar day of delay until the Work is complete.

7.2 Provided, that CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is for reasons included in Paragraph 4.05 of the General Conditions.

7.3 Provided, further, that CONTRACTOR shall, furnish OWNER the required notification of such delays in accordance with Paragraph 11.08 of the General Conditions.

ARTICLE 8. ASSURANCE

8.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, State and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

8.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications.

8.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in the above paragraph as he deems necessary for the performance of the Work at the Contract Price within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by him for such purposes.

8.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

8.5 CONTRACTOR has given ENGINEER written notice of any conflict, error or discrepancy that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

8.6 CONTRACTOR agrees that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.

ARTICLE 9. CONTRACT DOCUMENTS

9.1 The Contract Documents which comprise the Contract between OWNER and CONTRACTOR are attached hereto and made a part hereof and consist of the following:

9.1.1 Invitation to Bid.

9.1.2 Instructions to Bidders.

9.1.3 Bid Form.

9.1.4 This Agreement.

9.1.5 Performance Bond, EJCDC Document C-610, 2018 edition, Payment Bond, EJCDC Document C-615, 2018 edition, and other required Bonds.

9.1.6 General Conditions. EJCDC Document C-700, 2018 edition.

9.1.7 Specifications (as listed in Table of Contents).

9.1.8 Plans, numbered 1 through 13, inclusive and dated July 2021.

9.1.9 Environmental Permits

9.1.10 Addenda numbers No. 1 to —, inclusive.

9.1.11 Any modification, including Change Orders, duly delivered after execution of Agreement.

ARTICLE 10. MISCELLANEOUS

10.1 Terms used in this Agreement, which are defined in Article 1 of the General Conditions of the Contract shall have the meanings assigned in the Conditions of the Contract.

10.2 Neither OWNER nor CONTRACTOR shall, without the prior written consent of the other, assign or sublet in whole or in part his interest under any of the Contract Documents; and, specifically but without limitation, CONTRACTOR shall not assign any monies due or to become due without the prior written consent of OWNER. In case CONTRACTOR assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to CONTRACTOR shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

10.3 OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

10.4 The Contract Documents constitute the entire agreement between OWNER and CONTRACTOR and may only be altered, amended or repealed by a Change Order or Work Change Directive.

10.5 This agreement shall be governed by and constructed in accordance with Massachusetts' law.

10.6 If any provisions of this Agreement is determined to be invalid or unenforceable by final judgement of a court of competent jurisdiction, the remaining provisions shall continue in effect to the extent permitted by law.

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All Rights Reserved

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in sextuple. Four copies each have been delivered to OWNER and one copy each to CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement shall become effective on Aug 30, 2021

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER
[Signature]
By: _____
Title: _____
Date: 8/31/21

CONTRACTOR: J.H. Maxymillian, Inc.
[Signature]
By: James H. Maxymillian
Title: Secretary + Treasurer
Date: 8/31/21

Address for giving notices:

Town of Buckland
17 State Street
Shelburne Falls, MA 01370

Address for giving notices:
1801 East Street
Pittsfield MA 01201

(CORPORATE SEAL)
[Signature]
Town Accountant
Attest to the
availability of
funds

(CORPORATE SEAL)
[Faint Seal]



Supplemental Form for General Bid

Project: Bridge Preservation, Apple Valley Road over Upper Branch Clesson Brook
 Location: Buckland, MA

Item Number	Qty.	Qty.	Item with Unit Bid Price Written in Words	Unit Price	Amount
120.1	310	CY	UNCLASSIFIED EXCAVATION Thirty Dollars and Zero Cents at _____ PER CUBIC YARD	\$ 30.00	\$ 9,300.00
143.	90	CY	CHANNEL EXCAVATION Two Hundred and Seventy-Two Dollars and Zero Cents at _____ PER CUBIC YARD	\$ 272.00	\$ 24,480.00
144.	10	CY	CLASS B ROCK EXCAVATION Two Hundred Dollars and Zero Cents at _____ PER CUBIC YARD	\$ 200.00	\$ 2,000.00
150.2	15	CY	NATURAL STREAMBED MATERIAL Two Hundred and Seventy-Four Dollars and Zero Cents at _____ PER CUBIC YARD	\$ 274.00	\$ 4,110.00
151.	170	CY	GRAVEL BORROW Forty Dollars and Zero Cents at _____ PER CUBIC YARD	\$ 40.00	\$ 6,800.00
156.5	4	CY	CRUSHED STONE FOR FILTER BLANKET One Hundred and Fifty Dollars and Zero Cents at _____ PER CUBIC YARD	\$ 150.00	\$ 600.00

Carried Forward

	\$ 47,290.00
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Item Number	Qty.	Qty.	Item with Unit Bid Price Written In Words	Unit Price	Amount
			Brought Forward		
170.	650	SY	FINE GRADING AND COMPACTING Ten Dollars and Zero Cents at _____ PER SQUARE YARD	\$ 10.00	\$ 6,500.00
402.	70	CY	DENSE GRADED CRUSHED STONE FOR SUB-BASE One Hundred and Twenty-Five Dollars and Zero Cents at _____ PER CUBIC YARD	\$ 125.00	\$ 8,750.00
415.1	30	SY	PAVEMENT STANDARD MILLING Seventy-Five Dollars and Zero Cents at _____ PER SQUARE YARD	\$ 75.00	\$ 2,250.00
415.3	35	SY	BRIDGE PAVEMENT MILLING Seventy-Five Dollars and Zero Cents at _____ PER SQUARE YARD	\$ 75.00	\$ 2,625.00
440.	2,000	LB	CALCIUM CHLORIDE FOR ROADWAY DUST CONTROL Dollars and Forty-Five Cents at _____ PER POUND	\$ 0.45	\$ 900.00
443.	2	MGL	WATER FOR ROADWAY DUST CONTROL Five Hundred Dollars and Zero Cents at _____ PER THOUSAND GALLONS	\$ 500.00	\$ 1,000.00
450.221	70	TON	SUPERPAVE SURFACE COURSE - 9.5 POLYMER (SSC-9.5-P) Three Hundred and Thirty Dollars and Zero Cents at _____ PER TON	\$ 330.00	\$ 23,100.00
450.31	60	TON	SUPERPAVE INTERMEDIATE COURSE - 12.5 (SIC 12.5) Three Hundred and Twenty-Five Dollars and Zero Cents at _____ PER TON	\$ 325.00	\$ 19,500.00

Carried Forward

	\$ 111,915.00
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Item Number	Qty.	Qty.	Item with Unit Bid Price Written in Words	Unit Price	Amount
			Brought Forward		
450.41	105	TON	SUPERPAVE BASE COURSE - 25.0 (SBC - 25.0) Two Hundred and Thirty-Seven Dollars and Zero Cents at _____ PER TON	\$ 237.00	\$ 24,885.00
452.	100	GAL	ASPHALT EMULSION FOR TACK COAT Forty-Four Dollars and Zero Cents at _____ PER GALLON	\$ 44.00	\$ 4,400.00
453.	500	FT	HMA JOINT SEALANT One Dollar and Seventy-Five Cents at _____ PER FOOT	\$ 1.75	\$ 875.00
698.3	60	SY	GEOTEXTILE FABRIC FOR SEPARATION Five Dollars and Zero Cents at _____ PER SQUARE YARD	\$ 5.00	\$ 300.00
751.	18	CY	LOAM BORROW Two Hundred Dollars and Zero Cents at _____ PER CUBIC YARD	\$ 200.00	\$ 3,600.00
765.	125	SY	SEEDING Ten Dollars and Zero Cents at _____ PER SQUARE YARD	\$ 10.00	\$ 1,250.00
767.121	510	FT	SEDIMENT CONTROL BARRIER Twenty Dollars and Zero Cents at _____ PER FOOT	\$ 20.00	\$ 10,200.00
852.	150	SF	SAFETY SIGNING FOR TRAFFIC MANAGEMENT Thirty-Five Dollars and Zero Cents at _____ PER SQUARE FOOT	\$ 35.00	\$ 5,250.00
853.1	1	EA	PORTABLE BREAKAWAY BARRICADE TYPE III Three Hundred and Fifty Dollars and Zero Cents at _____ PER EACH	\$ 350.00	\$ 350.00

Carried Forward

	\$ 163,025.00
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Item Number	Qty.	Qty.	Item with Unit Bid Price Written in Words	Unit Price	Amount
			Brought Forward		
853.8	5	DAY	TEMPORARY ILLUMINATION FOR WORK ZONE Dollars and One Cents at _____ PER DAY	\$ 0.01	\$ 0.05
859.	430	DAY	REFLECTORIZED DRUM Dollars and Fifty Cents at _____ PER DAY	\$ 0.50	\$ 215.00
983.	130	TON	DUMPED RIPRAP Sixty-Five Dollars and Zero Cents at _____ PER TON	\$ 65.00	\$ 8,450.00
983.211	7	CY	PARTIALLY GROUTED RIPRAP Six Hundred and Seventy-Five Dollars and Zero Cents at _____ PER CUBIC YARD	\$ 675.00	\$ 4,725.00
988.3	15	CY	CHANNEL PAVING - GROUT FILLED BAGS Three Thousand Six Hundred and Sixty-Five Dollars and Zero Cents at _____ PER CUBIC YARD	\$ 3,665.00	\$ 54,975.00
991.1	1	LS	CONTROL OF WATER - BRIDGE NO. B28029 Thirty-Eight Thousand One Hundred and Eighty-One Dollars and Zero Cents at _____ PER LUMP SUM	\$ 38,181.00	\$ 38,181.00
999.100	1	ALL	TRAFFIC POLICE at THREE THOUSAND DOLLARS AND ZERO CENTS ALLOWANCE	\$3,000	\$ 3,000.00
999.300	1	ALL	MATERIAL SAMPLING AND TESTING SERVICES THREE THOUSAND DOLLARS AND ZERO CENTS ALLOWANCE	\$3,000	\$ 3,000.00

Total = \$ 275,571.05

Total (in words below) =

Two Hundred and Seventy-Five Thousand Five Hundred and Seventy-One Dollars and Five Cents

PERFORMANCE BOND

CONTRACTOR (name and address):

J. H. Maxymillian, Inc.
1801 East Street
Pittsfield, MA 01201

SURETY (name and address of principal place of business):

Federal Insurance Company
150 Allen Road Suite 203
Basking Ridge, NJ 07920

OWNER (name and address):

Town of Buckland
17 State Street
Shelburne Falls, MA 01370

CONSTRUCTION CONTRACT

Effective Date of the Agreement: August 30, 2021

Amount: \$275,571.05

Description (name and location): Bridge Preservation of B-28-029 (5D5), Apple Valley Road over Upper Branch Clesson Brook

BOND

Bond Number: K4042538A

Date (not earlier than the Effective Date of the Agreement of the Construction Contract): August 30, 2021

Amount: \$275,571.05

Modifications to this Bond Form: None See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

J.H. Maxymillian, Inc. (seal)

Contractor's Name and Corporate Seal

X By: [Signature]
Signature

James H. Maxymillian
Print Name

Secretary + Treasurer
Title

Attest: [Signature]
Signature

Contracts
Title

SURETY

Federal Insurance Company (seal)

Surety's Name and Corporate Seal

By: [Signature]
Signature (attach power of attorney)

Donna M. Bishop
Print Name

Attorney In Fact
Title

Attest: [Signature]
Signature Grace J. Gray

Attorney In Fact
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations

available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all

Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

CHUBB

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint Donna M. Bishop, Grace J. Gray and Kathleen M. O'Brien of North Adams, Massachusetts; Eric P. Pratt and Diane J. Wojcik of Pittsfield, Massachusetts -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on this 20th day of July, 2019.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon ss.

On this 20th day of July, 2019, before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 16, 2024

Katherine J. Adelaar
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this 30th day of August, 2021



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

PAYMENT BOND

CONTRACTOR (name and address):

J.H. Maxymillian, Inc.
 1801 East Street
 Pittsfield, MA 01201

SURETY (name and address of principal place of business):

Federal Insurance Company
 150 Allen Road Suite 203
 Basking Ridge, NJ 07920

OWNER (name and address): Town of Buckland 17 State Street, Shelburne Falls, MA 01370

CONSTRUCTION CONTRACT

Effective Date of the Agreement: August 30, 2021

Amount: \$275,571.05

Description (name and location): Bridge Preservation of B-28-029 (5D5), Apple Valley Road over Upper Branch Clesson Brook

BOND

Bond Number: K4042538A

Date (not earlier than the Effective Date of the Agreement of the Construction Contract): August 30, 2021

Amount: \$275,571.05

Modifications to this Bond Form: None See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

J.H. Maxymillian, Inc. (seal)

Federal Insurance Company (seal)

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

X By: James H. Maxymillian
 Signature

By: Donna M. Bishop
 Signature (attach power of attorney)

James H. Maxymillian
 Print Name

Donna M. Bishop
 Print Name

Secretary & Treasurer
 Title

Attorney In Fact
 Title

Attest: Samuel W. Zittel
 Signature

Attest: Grace J. Gray
 Signature Grace J. Gray

Contracts
 Title

Attorney In Fact
 Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by

anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of

"labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

CHUBB

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Donna M. Bishop, Grace J. Gray and Kathleen M. O'Brien of North Adams, Massachusetts; Eric P. Pratt and Diane J. Wojcik of Pittsfield, Massachusetts -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 20th day of July, 2019.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

SS.

On this 20th day of July, 2019, before me, a Notary Public of New Jersey, personally came Dawn M. Chloros, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros, being by me duly sworn, did depose and say that she is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that she signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that she is acquainted with Stephen M. Haney, and knows him to be Vice President of said Companies; and that the signature of Stephen M. Haney, subscribed to said Power of Attorney is in the genuine handwriting of Stephen M. Haney, and was thereto subscribed by authority of said Companies and in deponent's presence.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316085
Commission Expires July 18, 2024

Katherine J. Adelaar

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this 30th day of August, 2021



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

