

TOWN OF BUCKLAND, MASSACHUSETTS  
PROPOSED BRIDGE B-28-017 (C69)  
NILMAN ROAD OVER CLARK BROOK

AGREEMENT

THIS AGREEMENT made as of the 30th day of July in the year 2021 by and between the Town of Buckland, Massachusetts acting through its Town Administrator hereinafter called OWNER and Northern Construction Service, LLC with legal address and principal place of business at 1520 Park Street, Palmer, MA 01069 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 October 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.

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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 30, inclusive and dated March 2021.

9.1.9 Environmental Permits

9.1.10 Addenda numbers   1   to   3  , 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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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 \_\_\_\_\_, 2021

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

OWNER:

CONTRACTOR:

\_\_\_\_\_  
By:  
Title:  
Date: \_\_\_\_\_

  
By: William Tyrrell  
Title: Manager  
Date: July 30, 2021

Address for giving notices:

Town of Buckland  
17 State Street  
Shelburne Falls, MA 01370

Address for giving notices:

Northern Construction Service, LLC  
\_\_\_\_\_  
1520 Park Street  
\_\_\_\_\_  
Palmer, MA 01069  
\_\_\_\_\_

(CORPORATE SEAL)

(CORPORATE SEAL)