

**AGREEMENT BETWEEN
THE TOWN OF BUCKLAND AND
NITSCH ENGINEERING**

FOR PROFESSIONAL ENGINEERING SERVICES

THIS IS AN AGREEMENT made on the 22nd day of December, 2015, by and between the Town of Buckland Massachusetts, 17 State Street, Shelburne Falls, Massachusetts (hereinafter referred to as "Town"), and Nitsch Engineering Inc., (hereinafter "Consultant"), a firm incorporated in the state of Massachusetts with its principle place of business at 120 Front Street, Worcester, Massachusetts.

Town and Consultant agree to the performance and furnishing of certain professional services by Consultant for engineering design services for the reconstruction of South, Summer, and Conway Streets and Conway Road in the Town of Buckland (hereinafter referred to as the "Project") for certain consideration to be paid to Consultant by Town, as set forth more specifically in the mutual covenants set forth below.

This Agreement will become effective on the date that the last party fully executes the same.

1.0 CONTRACT DOCUMENTS

The Contract Documents consist of the following, and in the event of conflicts or discrepancies among them, they shall be interpreted on the basis of the following priorities:

- 1) This agreement between Town and Consultant
- 2) Invitation for bids, RFQ, quotation specifications, or request for proposals.
- 3) Consultant's proposal dated September 2, 2015
- 4) Agreed upon Scope of Work and Fee Proposal dated December 17, 2015
- 5) Town letters of all Addendums and clarifications.
- 6) Copies of all required bonds, certificates of insurance, and licenses required under the contract.

2.0 CONSULTANT'S SERVICES

The full execution of this Agreement by Town and Consultant constitutes the Town's written authorization for Consultant to proceed with the professional services described in the Consultant's proposal (hereinafter referred to as "Consultant Services").

Additional Services are those services requested by the Town to be performed by the Consultant but which are additional to the services included in the Consultant's proposal as Basic Services. Such Additional Services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Additional Services may be provided after execution of this agreement without invalidating the Agreement. Upon recognizing the need to perform Additional Services that may arise as the Project proceeds, the Consultant shall notify the Town. The proposed cost, scope and schedule of all Additional Services shall be presented and approved by the Town in writing prior to the performance of any Additional Services. Additional Services shall not be deemed authorized until a written Approval is received from the Town and an

amendment to this Agreement is executed by the Town and the Consultant addressing such Additional Services.

3.0 Performance of the Work

The Consultant shall supervise and direct the work required to undertake the Project, using its best skills and attention, which shall not be less than such state of skill and attention generally rendered by the engineering/design profession for projects similar to the Project in scope, difficulty and location.

3.1 Responsibility for the Work:

3.1.1 The Consultant shall be responsible to the Town for the acts and omissions of its employees, subcontractors and their agents and employees, and other persons performing any work under a contract with the Consultant. Consistent with the standard of care referenced above, the Consultant shall be responsible for the professional and technical accuracy for all work or services furnished by it or its consultants and subcontractors. The Consultant shall perform its work under this Agreement in such a competent and professional manner that detail checking and reviewing by the Town shall not be necessary.

3.1.2 The Consultant shall not employ additional consultants, nor sublet, assign or transfer any part of his services or obligations under this Agreement without the prior approval and written consent of the Town. Such written consent shall not in any way relieve the Consultant from his responsibility for the professional and technical accuracy for the work or services furnished under this Agreement.

3.1.3 All consultants must be registered and licensed in their respective disciplines if registration and licensure are required under the applicable provisions of Massachusetts law.

3.1.4 The Consultant and all consultants and subcontractors shall conform their work and services to any guidelines, standards and regulations of any governmental authority applicable to the type of work or services covered by this Agreement.

3.1.5 The Consultant shall not be relieved from its obligations to perform the work in accordance with the requirements of this Agreement either by the activities or duties of the Town in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Consultant.

3.1.6 Neither the Town's review, approval or acceptance of, nor payment for any of the work or services performed shall be construed to operate as a waiver of any rights under the Agreement or any cause of action arising out of the performance of the Agreement.

4.0 OWNERSHIP OF DOCUMENTS AND WORK PRODUCT

One (1) reproducible copy of all drawings, plans, specifications and other documents prepared by the Consultant shall become the property of the Town upon payment in full therefor to the Consultant. Ownership of stamped drawings and specifications shall not include the Consultant's certification or stamp. Any re-use of such documents without the Consultant's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the Consultant or to the Consultant's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as an act in derogation of the Consultant's rights under this Agreement.

All information acquired from the Town, or from others at the expense of Town, in the performance of this Agreement shall be and remain the property of Town. This includes but is not limited to all records, data files, computer records, work sheets, deliverable products (complete and incomplete) and all other types of information prepared or acquired by Consultant in the performance of Consultant Services.

5.0 TOWN'S RESPONSIBILITIES

Town shall appoint a person to serve as liaison between Town and Consultant with respect to the Project and Consultant Services. In addition to serving as Town Liaison, this person shall be responsible for scheduling all meetings between Consultant and Town's representatives. This person, however, shall have no authority to bind Town to make payments in excess of the specific appropriation for this Agreement.

1. The Town shall furnish to the Consultant available surveys, data and documents relating to the area which is the subject of the Scope of Work. All such information, including that relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Town. All such information is furnished only for the information and convenience of the Consultant and is not guaranteed. It is agreed and understood that the Town does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures will be the same as those indicated in the information furnished, and the Consultant must satisfy itself as to the correctness of such information. If, in the opinion of the Consultant, such information is inadequate, the Consultant may request the Town's approval to verify such information through the use of consultants or additional exploration. In no case shall the Consultant commence such work without the Town's prior written consent. Such work shall be compensated as agreed upon by Town and the Consultant.

6.0 PAYMENT BY THE TOWN FOR CONSULTANT SERVICES

The Town shall pay the Consultant for the performance of this Agreement, not to exceed sum of \$479,500.

The Town shall make payment per the Consultant's proposal and payment schedule within. Payment will be within forty five days after receipt of an invoice stamped in by

the appropriate Town office for work performed or materials supplied. Upon satisfactory completion of the work, forty five days after receipt of an invoice for final payment, the Town shall pay the Consultant all amounts due under the Contract.

This Agreement does not provide for the payment by Town to Consultant for any expenses incurred by Consultant outside of allowable expenses approved by the Town. The acceptance by Consultant of its final payment under this Agreement shall operate as a release of the Town of all claims and all liability by the Consultant. No payment, however, final or otherwise, shall operate to release Consultant from its obligations under this Agreement.

The Consultant shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Consultant in the preparation of the bid documents, as reasonably determined by the individual responsible for administering the Consultant contract.

7.0 SUSPENSION OF WORK

If Town is unable to proceed with the Project or its obligations under this Agreement either before or after the execution of this Agreement for any reason, regardless of whether such inability is caused by or is within the control of Town, Consultant shall not be entitled to make or assert any claim for damage by reason of said delay. However, the time for completion of Consultant Services shall be extended to such reasonable time as the Town may determine that will compensate for time lost by such delay, with such determination to be set forth by Town in writing.

8.0 TERMINATION

8.1 Termination

8.1.1 In the case of any default on the part of Consultant with respect to any of the terms of this Agreement, Town shall give written notice thereof. If said default is not remedied by Consultant within such reasonable time as Town shall specify in writing, Town shall notify Consultant in writing that there has been a breach of this Agreement. Consultant shall cease that portion of the Project so terminated by the Town as of the date set forth in the notice of termination. Consultant shall, upon the Town's request, promptly deliver all Documents related to the Project to the Town. The Consultant shall remain liable for the additional costs reasonably incurred by the Town to complete the Consultant's Services for which the Consultant is found to be legally liable in a court of competent jurisdiction. In case of such breach, Consultant shall be entitled to receive payment only for work satisfactorily completed prior to said breach in good faith and the amount of any balance due consultant shall be determined by Town in good faith.

8.1.2 Notwithstanding any other provision of this Agreement, the Town reserves the right at any time to suspend or terminate this Agreement in whole or in part for its convenience or due to an unavailability of funds upon fourteen days written notice to Consultant. Town shall incur no liability by reason of such termination for convenience except for the obligation to pay for work performed and accepted accruing through the date of termination less any offset or claim of Town. Such obligation shall

not exceed the available appropriation. Consultant shall have no right to recover other amounts, including but not limited to amounts for lost profits, indirect, incidental or consequential damages.

8.1.3 In the event of termination by Town, all finished work and documentation, complete and incomplete, shall be delivered to Town. Consultant shall be entitled to receive payment for any work performed and accepted under this Agreement, which was completed prior to the date of termination. In the event of termination prior to the completion of the work, Consultant shall have no right to recover other amounts, including but not limited to amounts for lost profits, indirect, incidental, or consequential damages.

8.1.4 After the notice of termination for cause under Section 8.1.1 above, it is determined that said cause was invalid, the termination shall be deemed to have been effected for the convenience of Town under Section 8.1.2. In such event, a payment adjustment shall be made as provided in Section 8.1.2.

8.1.5 Any termination or suspension of this Agreement shall not impair Town's right to recover damages occasioned by the fault of Consultant. Any suspension shall not limit the right of Town to terminate this Agreement.

8.2 Delay

Consultant shall have no damages for delay or hindrance. In the event of delay or hindrance not the fault of the Consultant, an extension of time shall be the Consultant's sole remedy.

8.3 Force Majeure

Neither party shall be liable to the other or deemed to be in breach under this agreement for any failure to perform, including, without limitation, a delay in rendering performance due to causes beyond its reasonable control, such as an order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary weather conditions, labor disputes, or shortages, or fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance shall be extended automatically to the extent of such delays, provided that the party whose performance is affected promptly notifies the other of the existence and nature of such delay.

9.0 INSURANCE

Consultant shall provide and maintain insurance at its own expense until the completion of Consultant Services as set forth below:

9.1 Worker's compensation insurance in accordance with state law;

9.2 Comprehensive general liability, comprehensive automobile liability and property damage insurance in the amount of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 in the aggregate. The Town shall be named an additional insured.

9.3 The Town must be named as an additional insured on a certification of insurance filed with the Executive Secretary at time of contract issue under the policies listed under Section 8.2. This Certificate of Insurance will be attached as an exhibit to this Agreement.

9.4 Professional liability insurance covering Consultant's errors and omissions with limits of at least \$1,000,000.00 for each claim and at least \$2,000,000.00 in the annual aggregate.

9.5 All insurance coverage shall be in force from the time of the Agreement to the date when all work under the Agreement is completed and accepted by the Town. **Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Town and shall list the Town as additional insured for each policy except for Workers' Compensation Insurance and Professional Liability Insurance.** Since this insurance is normally written on a year-to-year basis, the Consultant shall notify the Town should coverage become unavailable or if its policy should change. Any cancellation of insurance, whether by the insurers or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the Town at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice. Cancellation of required insurance shall be grounds for termination of this contract. The Consultant shall provide a copy of additional insured endorsements for all policies that require the Town to be listed as an additional insured.

10.0 INDEMNIFICATION

Consultant hereby agrees to indemnify and hold harmless Town and its officers, and employees from and against claims (including workers' compensation and wage claims) demands, suits, actions, liabilities, damages, penalties, judgments, and costs and expenses, including without limitation the costs and expenses of litigation and attorney's fees, arising out of the Consultant's breach of this Agreement or the misconduct or negligent acts or omissions of Consultant or Consultant's agents or employees.

11.0 MISCELLANEOUS PROVISIONS

11.1 Entire Agreement

Unless contained in this Agreement, or the Exhibits incorporated into and made a part of this Agreement, no warranties, statements, promises, or representations shall be considered a part of this Agreement or a basis upon which Consultant or Town entered into this Agreement.

11.2 Assignment of Interest

Consultant shall not assign, transfer, or convey any interest in this Agreement without the prior written consent of Town, which consent shall not be unreasonably withheld.

11.3 Subcontractors

Consultant shall not assign, subcontract, or delegate the performance of its services to any person, corporation, or entity without the prior written consent of Town. Provided that such consent is obtained, it is understood and agreed that any such persons, corporations, or entities hired by Consultant shall be deemed agents of Consultant and that Consultant shall be responsible for the methods, means, and materials used in connection with the performance of any such services, and for any breach of this Agreement or any delays or damages occasioned by such work.

11.4 Inspection by Town

The authorized representatives and agents of Town shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records of Consultant upon demand.

11.5 Incorporation of Applicable Law

Each and every provision of law required to be included in this Agreement shall be deemed to be included in this Agreement, and this Agreement shall be read and enforced as though such provisions were included herein. If through mistake or otherwise any such provision has not been included in this Agreement, or is not correctly inserted, then upon the application of either party to this Agreement, the Agreement shall forthwith be physically amended to make such inclusion or insertion.

11.6 Governing Law

Town and Consultant shall perform its services in conformity with the requirements and standards of Town, and with all applicable laws and regulations of the Commonwealth of Massachusetts and its political subdivisions, and with all applicable laws and regulations of the Federal Government.

In the event of any dispute concerning the meaning or application of this Agreement, any such dispute shall be resolved pursuant to law of the Commonwealth of Massachusetts and, if necessary, by a Court of the Commonwealth of Massachusetts. Both parties hereby consent to the jurisdiction of any such Court.

11.7 Licensure and Compliance with Massachusetts Tax Law

By executing this Agreement, Consultant agrees and certifies that it is licensed to perform the services required by this Agreement, and that it will secure such licensure for so long as it is bound to perform services under this Agreement. Documentation of such licensure shall be attached to this Agreement. Consultant shall comply with all applicable laws, ordinances, rules or regulations or codes of the State or Town in performing the work embraced by this Agreement. Pursuant to Mass. General Laws chapter 62C, section 49A, the Consultant certifies under the penalties of perjury that the Consultant has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

11.8 Corporate Contractor

The Consultant shall endorse upon this Agreement (or attach hereto) a Clerk's Certificate certifying the authority of the party signing this Agreement for the corporation and the existence of such corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in force and effect as of the date of submission. This Agreement shall not be enforceable against the Town unless and until the Consultant complies with this section.

11.9 Interpretation & Severability

For purposes of interpreting this Agreement in the context of a dispute over its terms or otherwise neither party shall be considered the drafter of this Agreement and neither party shall have any provision of this Agreement construed in its favor as a result of its role in drafting this Agreement or its bargaining power with respect to this Agreement, Consultant Services, the Project, or otherwise.

IN WITNESS WHEREOF the parties hereto have executed copies of this Agreement the day and year first above written. *

*If a Corporation, attach to each signed copy of this Agreement an attested copy of the vote of the Corporation authorizing the said signing and sealing.

Consultant Nitch Engineering
By its duly authorized representative
By: Lisa A. Brothers, PE
President & CEO
Title:

TOWN OF BUCKLAND
By its Board of Selectmen

[Signature]
Keri P. Fay
Dana G. W. Munn

Funding Source:

Account: Chapter 90

George A. Mula

Town Accountant

Dated: 12/21/2015

Approved as to availability of funds

[Signature]

Town Counsel

Dated: 1-4-16

Approved as to form

CERTIFICATE OF VOTE

(to be filed if Consultant is a Corporation)

I, Lisa A. Dolan, hereby certify that I am the duly qualified and acting
(Secretary of the Corporation)

Secretary of Nitsch Engineering, Inc. and I further certify that at
(Name of Corporation)

a meeting of the Directors of said Company, duly called and held on 12/01/2014,
(Date of Meeting)

at which all Directors were present and voting, the following vote was unanimously
passed:

VOTED:

To authorize and empower

Lisa A. Brothers

to execute Forms of General Quotation, Contracts or Bonds on behalf of the
Corporation.

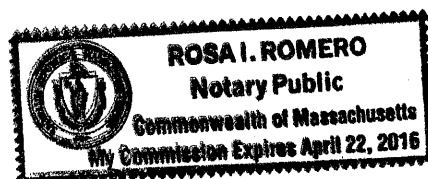
I further certify that the above vote is still in effect and has not been changed or
modified in any respect.

By: Lisa C. Dolan
(Secretary of Corporation)

A True Copy:

Attest: Rosa I. Romero
(Notary Public)

My Commission Expires: 4/22/2016
(Date)



CERTIFICATE AS TO CORPORATE CONSULTANT

I Lisa A. Dolan

Certify that I am Secretary

of the Corporation named as Consultant in the Proposal; that _____

Lisa A. Brothers who signed said Proposal on behalf of the

Consultant was then President & CEO of said

Corporation; that I know his signature and that his signature hereto is genuine and that

said Proposal was duly signed, sealed, and executed for and on behalf of said

Corporation by authority of its Board of Directors.

(Corporate Seal)

Lisa A. Dolan
(Signature)

Secretary
(Title)

This Certificate must be completed where the Consultant is a Corporation, and should be so completed by its Clerk. In the event that the Clerk is the person signing the proposal on behalf of the Corporation, this Certificate must be completed by another Officer of the Corporation.

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under the pains and penalties of perjury that this contract has been obtained in good faith and without collusion or fraud with any other person. As used in this certification, the word 'person' shall mean any natural person, business, partnerships, corporation, union, committee, club, or other organization, entity, or group of individuals.

Name of Business:

Nitch Engineering

Signature:

Lisa A Brothers

Name of Person signing Proposal:

Lisa Brothers