

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR PUBLIC CONSTRUCTION CONTRACT**

THIS AGREEMENT is by and between the **TOWN OF SIMSBURY** ("Owner"), a chartered municipality under the statutes of the State of Connecticut, acting herein by its Town Manager, Maria E. Capriola, duly authorized, and **SOME CONSTRUCTION COMPANY** ("Contractor"), a Connecticut Corporation, acting herein by ****Some Officer****, its ****Office Held****, duly authorized. The Owner and the Contractor agree as follows:

ARTICLE 1 – CONTRACT WORK

- 1.01 The Contractor shall complete all Contract Work as specified or indicated in the Contract Documents for the Project, entitled "Bloomfield-Tariffville Multi-Use Trail Connector", Bid No. 22-01. The Contract Work is generally described as follows:

ARTICLE 2 – THE PROJECT

- 2.01 *The Project, of which the Contract Work under the Contract Documents is approximately 0.84 miles of paved 10 – 12 foot wide recreational trail, intersection improvements and related work. The project begins approximately 600 linear feet west of State Route 189 and connects to an existing multi-use trail in Bloomfield. The trail then continues north along State Route 189 for approximately 0.75 miles to the intersection with Main Street in Tariffville. Included in the project are drainage improvements, a landscaping buffer along the trail route, intersection improvements and traffic signal modifications at the intersection of State Route 189/ 315 (Elm Street), , sidewalk improvements and the installation of bike racks at the northern terminus of the multi-use trail.*

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Vanasse Hangen Brustlin, Inc. (VHB).
- 3.02 The Owner has retained VHB ("Engineer") to act as the Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to the Engineer in the Contract Documents in connection with the completion of the Contract Work in accordance with the Contract Documents. More particular information regarding the Engineer as a business entity and its primary Project representative is provided in the Supplemental Contract Provisions.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 **Contract Times: Dates*
- A. The Contract Work will be substantially completed on or before [REDACTED], and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before [REDACTED].

[or]

4.02 **Contract Times: Days*

- A. The Contract Work will be substantially completed within [REDACTED] calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.08 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 26.13 of the General Conditions within [REDACTED] days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. The Contractor and the Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that the Owner will suffer financial and other losses if the Contract Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The Parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Contract Work is not completed on time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay (but not as a penalty):
 - 1. Substantial Completion: The Contractor shall pay the Owner \$ [REDACTED] for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

ARTICLE 5 – CONTRACT PRICE

- 5.01 The Owner shall pay the Contractor for completion of the Contract Work, as contemplated by the Parties at the Effective Date of this Agreement, in accordance with the Contract Documents the amounts that follow:

- A. *(for lump sum work) For all Contract Work, subject to any adjustments under the Contract, a lump sum of: \$ [REDACTED].

-or-

*(for unit price work) For all Contract Work, on the basis of unit prices provided by the Contractor and agreed to by the Owner for various Work Items identified in the Bid or as may have been modified by the Parties subsequent to the Bid, a calculated sum of: \$ [REDACTED], provided it is agreed by the Parties that:

- 1. Such sum is calculated based on estimated quantities (as of the Effective Date of this Agreement) of unit work for each of the various Work Items included therein; and said sum represents an amount equal to the sum of the extended price for each included Work Item calculated by multiplying the estimated quantity of units by the corresponding unit price for the subject Work Item;
- 2. The Contractor shall only be due compensation and paid based on the actual quantity for each and every Work Item incorporated into the Contract Work at the time of Final Payment; and, prior to final payment, that a final Change Order shall be issued adjusting such quantity for each Work Item to that quantity actually incorporated into the Contract Work, and the final total sum due and paid to the Contractor for the Contract Work, subject to any adjustments (in addition to said final Change Order) under the Contract, shall be as calculated per Paragraph 5.01.A.1 above using said final quantities;

3. As a result of the foregoing, the final sum paid to the Contractor for the Contract Work is likely to be different than that stated above in this Agreement; and such final sum may be greater or may be less than such stated sum, despite any effect such difference may have on the Contractor's anticipated profit or any other matter that may relate to the total sum paid to the Contractor under this Contract, although the Parties may in good faith, though at each Party's sole discretion, agree to make one or more equitable adjustments to the Contract Price or any component thereof where quantities of Work or the total sum differ to a large degree from those contemplated at the Effective Date of this Agreement; and,
4. A table of the itemized Work Items and corresponding units of work, estimated unit quantities, applicable unit price, and extended price on which the provided Contract Price is based is as set forth in Exhibit A attached hereto and made a part hereof by reference.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. The Contractor shall submit Applications for Payment in accordance with Article 26 of the General Conditions. Applications for Payment will be processed by the Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. The Owner shall make progress payments on account of the Contract Price on the basis of the Contractor's Applications for Payment, and may withhold retainage as associated therewith, in accordance with said Article 26 of the General Conditions and other applicable provisions of the Contract Documents.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Contract Work in accordance with Paragraph 26.13 of the General Conditions, the Owner shall pay the remainder of the Contract Price as recommended by the Engineer as provided in said Paragraph 26.13.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of six percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce the Owner to enter into this Contract, the Contractor makes the following representations:
 - A. The Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. The Contractor has visited the Project Site, conducted a thorough, alert visual examination of the Project Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Project Site conditions that may affect cost, progress, and performance of the Contract Work.
 - C. The Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Contract Work.

- D. The Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Project Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Project Site that have been identified in the Supplemental Contract Provisions, if any, especially with respect to any Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions at or adjacent to the Site that have been identified in the Supplemental Contract Provisions, if any, especially with respect to Technical Data in such reports and drawings.
- E. The Contractor has considered the information known to the Contractor itself; information commonly known to contractors doing business in the locality of the Project Site; information and observations obtained from visits to the Project Site; the Contract Documents; and the Project Site-related reports and drawings included or identified in the Contract Documents, if any, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Contract Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor; and (3) the Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraphs of this Paragraph 8.01, the Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Contract Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. ****The Contractor is aware of the general nature of work, if any, to be performed by the Owner or others at the Project Site that relates to the Contract Work as indicated in the Contract Documents.**
- H. The Contractor has given the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Contractor has discovered in the Contract Documents to date, and the written resolution thereof by the Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Contract Work.
- J. The Contractor's entry into this Contract constitutes an incontrovertible representation by the Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Contract Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages CA-1 to CA-7, inclusive).
 - 2. Performance bond (pages to , inclusive).
 - 3. Payment bond (pages to , inclusive).
 - 4. Project Manual – Volume 1 (pages – see Table of Contents).
 - a. Invitation to Bid
 - b. Bid Instructions and Information* (not in Contract Documents).
 - c. General Conditions.

- d. Supplemental Contract Provisions.
- e. Non-Town Agency Required Provisions and Forms:
 - 1) Applicable Executive Orders.
 - 2) State of Connecticut Prevailing Wage Information.
- 5. Project Technical Specifications (___ pages – Project Manual, Volume 2).
- 6. Improvement Plans For Bid consisting of ___ sheets as listed in the Sheet Index on the Title Sheet (Sheet ___) bearing the Project name and Bid No., and dated ___, 20___.
- 7. Exhibits to this Agreement (enumerated as follows):
 - a. The Contractor's Bid Submittal Package consisting of: (i) the completed Bidder Qualifications Statement (___ pages) and (ii) the Contractor's submitted Bid (pages BF-1 to BF-___, inclusive).
- 8. The following which may be delivered or issued on or after the Effective Date of the Contract (and are not attached hereto):
 - a. Notice to Proceed.
 - b. Schedule of Values.
 - c. Work Change Directives.
 - d. Change Orders.
 - e. Field Orders.
 - f. Amendments to this Agreement duly executed by both Parties.
- B. The documents listed in Paragraph 9.01.A are incorporated in this Agreement by reference, *except that the "Bid Instructions and Information" document is not a part of the Contract Documents or this Agreement. Any bonds or exhibits listed therein are attached to this Agreement.
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.
- E. The provisions of the Contract Documents shall govern in all matters relating to this Agreement.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplemental Contract Provisions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited

by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. The Owner and the Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and the Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. The Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of the Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive the Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. This Agreement form is a modified version of the EJCDC® C-520 template document (2013), and the General Conditions is a or is based in part on excerpts from the EJCDC® C-700 template document (2002), both Copyright© by the National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. Those portions of the text that originated in copyrighted EJCDC® documents remain subject to the copyright. If so requested, the Owner will provide the Contractor with a documentation of the modifications made to either EJCDC® template document.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

License No.: _____
(where applicable)