

SECTION 00520

AGREEMENT

Town of Chatham (the "Owner") and MAS Building & Bridge, Inc., hereinafter referred to as "Contractor," for the consideration hereinafter stated, hereby agree as follows:

1. PROJECT. Contractor shall perform everything required to be performed, shall provide and furnish all of the labor, equipment, materials, and tools to perform, within two hundred and seventeen (217) calendar days for the Bulkhead work and two hundred and fifty nine (259) calendar days for the balance of the work, after the NOTICE TO PROCEED, which is anticipated to be given no later than **SEPTEMBER 9, 2022** for the following work:

**CHATHAM FISH PIER – BULKHEAD RESHEETING AND
SOUTH JOG IMPROVEMENTS PROJECT
TOWN OF CHATHAM, MA**

in strict accordance with the Contract Documents pertaining thereto and signed by the Engineer for the Owner, which Documents are incorporated herein and made a part of this Agreement as if herein fully set forth. Subject to all authorized modifications, completion of construction activities must be achieved no later than **MAY 26, 2023**.

CONTRACT AMOUNT. Owner shall pay to Contractor, as full consideration for the faithful performance by Contractor of the aforementioned work, the amount of Three Million Six Hundred Forty Five Thousand Two Hundred Forty Seven Dollars (\$3,645,247.00) computed in accordance with Contractor's accepted Bid dated August 22, 2022, which accepted Bid is incorporated herein by reference thereto as if herein fully set forth.

2. SUPERVISION. All of the work to be done shall be done under the direction and supervision of, and to the approval of, Owner or its authorized representative, and the work shall be done in the best workmanlike manner, conforming strictly to the provisions of the specifications and plans made thereof.
3. COMPLIANCE WITH LAWS. (a) Contractor shall comply with all applicable provisions of the Massachusetts General Laws inclusionary of any and all Labor and Labor Relations Statutes.

Before the Agreement between Owner and Contractor is entered into, Contractor shall submit written evidence that it and any subcontractors have obtained for the period of the Contract, full Workers' Compensation insurance coverage for all persons whom they employ or may employ in carrying out the work under this Contract. This insurance shall be in accordance with the requirements of the most current and applicable state Workers' Compensation insurance laws. The Contractor in signing this Agreement certifies to Owner as true the following statement:

I am aware of the provisions of Massachusetts General Laws, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

5. **PERFORMANCE STANDARDS.** The Work must be performed and completed in accordance with all requirements of law and no Work shall be undertaken until Contractor has been issued all required permits from all applicable municipal, state and federal governmental bodies. “Completion” of the Work includes obtaining all certificates, or amendments of existing certificates, as the case may be, which relate to the performance of the Work. Unless otherwise specified in this Agreement, the Work must be performed in a good and workmanlike manner and in accordance with the best modern practice and with materials and workmanship of the highest quality. Contractor shall check and verify all dimensions, grades, and levels before commencement of performance and whenever necessary during the progress thereof.
6. **PAYMENTS.** Owner shall pay the Contractor for complete and accepted performance of the Work, subject to additions and deductions by Change Orders. The Contractor agrees to provide with each payment application (invoice), lien waivers sufficient to discharge any liability from the Owner to Contractor. Partial payments shall cover work completed through the 25th calendar day of each month for contracts where the number of working days exceeds twenty (20). No partial payments will be made for contracts having a time limit of twenty (20) days or less, unless completion has been significantly delayed by causes which are clearly not the fault of the Contractor. When partial payments are to be made, the Contractor shall submit to the Owner, on Owner’ forms, an estimate of the total amount of work accomplished, which will show the computed amount due less a retention which shall be 10% of the value of the work accomplished. No partial payments will be made for materials stored on the job but not yet installed, unless otherwise provided in the Contract Documents. Each request for payment application must be approved by the Project Engineer and will not be considered as submitted until the Owner, Contractor and Project Engineer agree to unit quantities covered by the payment application. Once Owner has received the approved request for payment application, Owner shall process the Contractor’s invoice and pay Contractor any undisputed amount within thirty (30) calendar days from the date of receipt of a complete application for payment from Contractor.
7. **JOB SITE.** The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the assigned task. The Contractor at all times shall keep the job site free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, it shall remove all its waste materials and rubbish from and about the job site as well as its tools, construction equipment, machinery and surplus materials. The Contractor shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work, the safety of persons and property and their protection from damage, injury, or loss. Contractor shall provide repair response within twenty-four (24) hours of request by Owner during the course of performance of the Work under this Agreement for any repair work that has been poorly constructed and or performed or any work that results in either consequential or actual damage to any property associated with the Contractor’s operations.
8. **STORAGE OF MATERIALS.** Materials and equipment shall be stored in a neat and orderly manner at locations designated by the Owner, taking all necessary precautions to prevent fire hazards and spontaneous combustion and to conform to the requirements of all applicable regulatory agencies and insurance policies.

9. **EQUIPMENT AND MATERIALS.** Contractor shall furnish all labor, tools, scaffolding, ladders, equipment, supplies and materials required in performing all Work under this Agreement. Owner assumes no liability or responsibility for the care, safety, or preservation of any tools, machinery, equipment, material or supplies and all risks thereof are assumed by Contractor.
10. **SAFETY PROCEDURES.** Contractor shall at all times take all necessary and customary precautions in introducing and maintaining safety measures to protect the persons and property of others on or adjacent to the Work site against all damage, loss, or injury resulting from the Work involved under this Agreement. Contractor shall comply with any site-specific safety plans for the individual project properties. Protective arrangements will be taken in all instances to prevent Work operations from in any way damaging the premises or any personal property or any other work or operations, and from causing or allowing any pollution to leak, flow, or escape into any waterway or sewer. Contractor's obligation to protect shall include the duty to provide, place, and adequately maintain at or about the Worksite suitable and sufficient guards, lights, barricades, and enclosures. Contractor shall dispose of all hazardous materials used or produced in connection with this Agreement in the manner required by law.
11. **PERMITS AND TAXES.** The Contractor shall pay any and all federal, state, and municipal taxes for which the Contractor may be liable in carrying out this Agreement.
12. **LIQUIDATED DAMAGES.** Subject to all authorized modifications, It is hereby agreed by the parties to the Agreement that in case all work called for under the Agreement is not finished or completed on or before the time set forth in this Agreement, damage will be sustained by Owner, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the Owner will sustain in event of and by reason of such delay; Liquidated damages have been read, negotiated and agreed to by both parties and are stated as ~~set forth in the project specifications~~ follows:

- a. If Contractor shall neglect, refuse, or fail to substantially complete the **Bulkhead work (including Pier, Fendering, and Cathodic Protection) by April 14, 2023** (as duly adjusted pursuant to the Contract), Contractor shall pay the Owner \$500 for each day that expires after such time until this phase of the Work is completed as determined by a pay request submitted by the Contractor and approved by the Construction Manager. The number of calendar days between Notice to Proceed (assumed September 9, 2022) and Substantial Completion is two hundred and seventeen (217) days.
- b. If Contractor shall neglect, refuse, or fail to substantially complete the **balance of the work (including the lower lot and sidewalk, guardrail, lighting, Harbor Master building deck and stair, and Barcliff walkway, by May 26, 2023** (as duly adjusted pursuant to the Contract), Contractor shall pay the Owner \$250 for each day that expires after such time until this phase of the Work is completed as determined by a pay request submitted by the Contractor and approved by the Construction Manager. The number of calendar days between Notice to Proceed (assumed September 9, 2022) and Substantial Completion is two hundred and fifty nine (259) days.

<u>APRIL 14, 2023</u>	<u>Bulkhead</u>
<u>APRIL 14, 2023</u>	<u>Cathodic Protection</u>
<u>MAY 26, 2023</u>	<u>Lower Lot Sidewalk/Guardrail/Lighting</u>
<u>MAY 26, 2023</u>	<u>HM Deck/Barcliff Walk</u>

Time is of the essence in all respects on this Contract. Contractor shall accordingly prosecute all Work diligently, using such means and methods of construction as will assure Substantial full Completion not later than the respective dates set forth above, respectively, as such dates may for good cause (as set forth in the Construction Documents) be extended by the Owner. Nothing in this Article, however, grants the Contractor the privilege to use means or methods that do not accord with sound and accepted practices.

In the event that the Contractor fails, refuses, or neglects to fully and finally complete the Work to the satisfaction of the Owner (Final Completion) as required in the Contract for each of the aforementioned categories of Work within thirty (30) days of the respective Substantial Completion dates for each such category, the Owner may, in its sole discretion, assess additional liquidated damages in the amount of \$250 for each day that expires after the date of Substantial Completion of each phase of the Work up through the date of Final Completion thereof.

The amounts of liquidated damages imposed hereunder shall be cumulative and may, at Owner's option, be deducted and retained in whole or in part as a credit from any Contract Sum amounts then owed Contractor or which may have been paid to the Contractor. If no amounts are then owed to Contractor, Contractor shall pay to Owner the amount of liquidated damages upon written demand therefor. The liquidated damages shall cease once the Contractor has fully and completely any breach as set forth hereunder.

13. ABANDONMENT; INCREASE. All Work shall be performed according to a mutually agreed upon schedule. The suspension of work by the Contractor for any reason (other than the sole fault of the Owner), which exceeds four hundred and eighty hours (480) hours, shall be deemed abandonment of the project by the Contractor, and the Owner shall have available any and all remedies, including but not limited to surety participation pursuant to the terms of the faithful Performance Bond.

It is further agreed that in case the work called for under this Agreement is not completed in all of its parts and requirements within the number of calendar days specified, Owner shall have the right to increase the number of calendar days or not, as may seem best to serve the interest of Owner; and if it is decided to increase the said number of calendar days, Owner shall further have the right to charge to Contractor, and deduct from the final payment for the work, all or any part, as Owner may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses of Owner which are directly chargeable to this Agreement, except that the cost of final surveys and the preparation of the final estimate shall not be included in such charges to be paid by Contractor.

14. GUARANTY. Except as otherwise may be provided herein, Contractor hereby expressly guarantees for two (2) full years from the date of the final completion of the work under this Agreement and acceptance thereof by Owner, to repair or replace any part of the work performed hereunder which constitutes a defect resulting from the use of inferior or

defective materials, equipment or workmanship. If, within said period, any repairs or replacements in connection with the work are, in the opinion of the Project Engineer, rendered necessary as a result of the use of inferior or defective materials, equipment or workmanship, Contractor agrees, upon receipt of notice from Owner, and without expense to Owner, to promptly repair or replace such material or workmanship and/or correct any and all defects therein. If Contractor, after such notice, fails to proceed promptly to comply with the terms of this guarantee, Owner may perform the work necessary to effectuate such correction and recover the cost thereof from Contractor or his sureties.

Any and all other special guarantees which may be applicable to definite parts of the work under this Agreement shall be considered as an additional guarantee and shall not reduce or limit the guarantee as provided by Contractor pursuant to this paragraph during the first year of the life of such guarantee.

As security for the faithful performance by the Contractor for maintenance for the period herein required, the Contractor shall, upon acceptance of the work performed under the Contract, in addition to the faithful Performance Bond and labor and material Payment Bond required.

15. INDEMNIFICATION. The Contractor hereby indemnifies and shall at all times save and hold harmless the Town of Chatham, and its officers, attorneys, employees, and agents from and against any and all claims (including workers' compensation and wage claims), demands, suits, actions, liabilities, damages, penalties, judgments, and costs and expenses, including without limitation additional engineering costs and attorney's fees and the costs and expenses of litigation, of or by anyone that in any way is caused by, arises out of, or is occasioned by the performance, activities, operations, conducts, negligence, or omissions of the Contractor, or any of its agents or employees, including subcontractors.
16. INSURANCE. Contractor, at its sole cost and expense, shall acquire and maintain in full force and effect throughout the term of this Agreement Workers' Compensation, employer's liability, commercial general liability, and owned, non-owned and hired automobile liability insurance coverage relating to Contractor's Work to be performed hereunder covering Owner' and Department's respective risks, as their interest may appear, in form subject to the approval of the Owner. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event shall be as follows:

Insurance Category	Minimum Limits
Workers' Compensation	Statutory minimum and endorsement for United States Longshoremen's & Harbor Workers Act, the Jones Act Coverages
Employer's Liability	\$1,000,000.00 per accident for bodily injury or disease.

Commercial General Liability	\$3,000,000.00 per occurrence for bodily injury, personal injury and property damage.
Excess Liability (Umbrella)	\$3,000,000.00 per occurrence for bodily injury, personal injury and property damage.
Automobile Liability	\$1,000,000.00 per accident for bodily injury and property damage (coverage required to the extent applicable to Contractor's vehicle usage in performing work hereunder).

Any deductibles or self-insured retentions must be declared to and approved by Owner. At the option of Owner either Contractor's insurer shall reduce or eliminate the deductibles or self-insured retentions with respect to Owner, it's Board, commissions, boards, committees, officers, agents and employees, or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Concurrently with the execution of this Agreement, Contractor shall furnish Owner with certificates of the insurance required hereunder and, with respect to evidence of commercial general liability automobile liability and fire insurance coverage, original endorsements:

- a. Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after Owner shall have received written notification of cancellation or reduction in coverage first class mail;
 - b. Providing that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability (cross liability endorsements);
 - c. Naming Owner, its Board, commissions, boards, committees, officers, employees and agents as additional insureds; and
 - d. Providing that Contractor's insurance shall be primary insurance relating to Contractor's work hereunder with respect to Owner, and further providing that any insurance or self-insurance maintained by Owner shall not be excess of Contractor's insurance and shall not be contributory with it.
17. PERFORMANCE BOND. Contractor shall provide, on the execution of this Agreement, a good and sufficient corporate surety bond in the penal sum of one hundred percent (100%) of amount bid, which bond shall be conditioned upon the faithful performance of all work required to be performed by Contractor under this Agreement. Said bond shall be liable for any and all penalties and obligations which may be incurred by Contractor under this Agreement. Acceptance of the bond by the Owner is subject to the review and approval of the bond by the Owner Counsel's office.

18. **PAYMENT BOND.** In addition to the faithful Performance Bond required herein, Contractor shall furnish a good and sufficient corporate surety bond in the penal sum of fifty percent (50%) of amount of bid. Acceptance of the bond by the Owner is subject to the review and approval of the bond by the Owner Counsel's office.
19. **TIME DELAYS.** If the Contractor is delayed in the performance of the Work due to changes ordered in the Work by the Owner or, by labor disputes, fire, unusual delay in transportation, unavoidable casualties, certified natural disasters, then the contract time may be extended by a Change Order for such reasonable time as both parties have mutually agreed upon. **Winter weather conditions are not a reason for a delay in the performance of work.** Contractor agrees, as a special inducement to the Owner, to make no claim for damages for delay in the performance of this Contract occasioned by the Owner's act, or omission to act, or anyone acting on the Owner's behalf; and Contractor agrees that any claim for delays by the Owner shall be exclusively and fully compensated for by an extension of time to complete performance of the Contract Work.
20. **PAYMENT OF MATERIALMAN AND LABORERS.** The Contractor shall make prompt payment of all claims for labor performed and materials furnished, used or consumed in the Work, including without limitation fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline and other motor oil, lubricating oil and greases, and the premiums for Worker's Compensation insurance. Contractor shall indemnify and hold Owner harmless for any and all losses or expenses from any and all mechanic's or material man's liens from being filed on any Owner's Property. Should any mechanic's liens or materials man's liens be filed by Contractor agrees to have any and all releases cleared and satisfied prior to any payments being released. The Owner shall, in its discretion notify Contractor and or Contractor's representative of any lien and require Contractor to release liens as a condition precedent to further monthly progress payments.
21. **FINAL PAYMENT.** Upon completion of all the Work included under the Contract, the Contractor shall submit its final invoice. The Owner will, at the expiration of thirty (30) days after delivery of the approved payment application and acceptance, pay, and hereby binds itself to pay the Contractor for accepted work, except such sum or sums of money as may have been already paid, and as may be lawfully retained under any of the provisions of the Agreement herein set forth. Prior to the final payment, Contractor will deliver to the Owner waivers of lien from all those who supplied labor, material, or services in completion of the Contract, together with satisfactory proof of full payment to such suppliers.
22. **PAYMENTS AND COMPLETION.** Any payment not made when duly due and owing to the Contractor shall bear interest at the rate of seven percent (7%) per annum from the date on which said amount is found to be due and payable until the date, which it is paid. Payments may be withheld on account of (1) Work defects not remedied, (2) claims filed, (3) failure of the Contractor to make payments properly to sub-Contractor's or for labor, materials or equipment, (4) damage of the Owner's property or neighboring property, or (5) failure to carry out the Work in accordance with this Agreement or any other breach of this Agreement.

23. CHANGE ORDERS. (a) Contractor understands that the Owner may modify or change the details of the Project so as to require the performance of extra Work. All change orders or modifications to the Agreement shall be in writing, signed by the Contractor and the Owner. If any changes are made, Contractor will perform the same but only after receiving a written order for such performance from the Owner, it being understood by Contractor that under no circumstances shall any extra Work be performed unless and until such written order is given to Contractor by the Owner. For any such extra Work performed, Contractor shall be compensated by the Owner at the unit prices set forth in the Contract Documents, or for unspecified items shall be negotiated by the Owner and Contractor in a commercially reasonable amount at the time the Change Order is signed. The Owner may at its election omit items from the Contract Work whenever the Owner deems it advisable to do so. And if the Owner shall notify Contractor of such omission, the omitted Work shall not be performed and there shall be deducted from the Contract price at the stated amounts set forth in the Contract Documents or for unspecified items, a commercially reasonable amount at the time the Change Order is signed to compensate for the omission.

If any dispute shall arise at any time on a claim by Contractor that an item of Work is not Contract Work but extra Work, Contractor shall nevertheless perform the same if directed to do so by the Owner. However, to preserve Contractor's right to claim extra compensation for the disputed Work, Contractor must, prior to the commencement of the disputed Work, notify the Owner in writing that Contractor is performing the same under protest. The same procedure shall prevail as to any dispute as to a deduction for omitted Work (or as the case may be, to sustain Contractor's contention as to the appropriate compensation for extra Work that is not disputed to be an "extra" as long as the Contractor so notifies the Owner prior to commencement of the "extra") the notice in that circumstance to be given no later than ten (10) days after the tender of payment by the Owner to Contractor of the reduced amount (failing such written protest, it shall be deemed that Contractor has acquiesced to the Owner's contention that the Work is not extra but Contract Work or that the reduction (or amount of compensation for a non-disputed "extra" is correct, as the case may be). The giving of the protest provided for above, and giving it timely, are express conditions precedent to maintaining any remedial procedure, whether arbitration or otherwise, pertaining to Contractor's claim.

24. WARRANTIES AND CORRECTION OF WORK. Contractor warrants materials and workmanship to be in compliance with all applicable codes, ordinances and laws, constructed according to sound engineering and construction standards, in a workmanlike manner, and to be free from defects and liens at the time of installation and performance and as of the Completion Date. Contractor shall promptly perform such work and supply such materials necessary to correct, at its own expense, defects in materials and workmanship, and any Work failing to conform to the Agreement. In the event that Contractor fails to perform any Warranty Work within thirty (30) days of written notice by the Owner, or in the event that performance is not possible within such time period because of weather or other unavoidable delays and if the Contractor fails to provide a written undertaking to the Owner to perform such Warranty Work within a specific time period after notice, then the Owner shall be entitled to contract for the repairs or replacement of the defective work with a third party and Contractor agrees to reimburse the Owner for the costs of such Warranty Work promptly upon demand, together with interest at the rate provided herein on any sums unpaid under the Agreement and all costs of collection,

including reasonable attorney's fees, if such reimbursement is not made within thirty (30) days of written demand therefore by the Owner.

25. COOPERATION WITH CONSULTANT. Contractor understands and agrees that the Owner has hired Foth Infrastructure & Environment, LLC (Foth) as Construction Manager, Project Engineer, and Project Consultant. Contractor agrees to fully cooperate with the Licensed Site Professional (LSP), Foth, or any other such person or organization with regard to such oversight.
26. DEFAULT AND TERMINATION. The following shall be considered to be Events of Default under the Contract:
- a. Contractor's failure to achieve Substantial Completion or Final Completion of the respective categories of the ~~complete all~~ Work in accordance with the schedule provided for in the Agreement;
 - b. Contractor's failure to perform the Work described in the Agreement in accordance with the scope of services and specifications provided;
 - c. The dissolution, termination of existence, insolvency, or business failure of the Contractor;
 - d. The appointment of a receiver for any property belonging to Contractor;
 - e. Contractor's making of an assignment for the benefit of creditors, or the commencement of proceedings under a bankruptcy or insolvency law by or against the Contractor;
 - f. The failure of the Contractor to obtain or maintain any insurance coverage required under the contract; and
 - g. Contractor's failure to comply with any of the Agreement terms as set forth in the specifications plans and permits required.

If an Event of Default is not corrected or remedied within five (5) working days of written notice of such default, then the Owner shall be entitled to terminate this Agreement without further notice. In such event, the Owner shall be entitled to contract for the completion of the Work to be performed under the Agreement by a third party and Contractor shall be responsible for all extra costs and damages, including liquidated damages, incurred by the Owner.

27. NOTICES. Notices to be given under this Agreement shall be in writing and may be personally delivered or sent by United States mail, first class postage prepaid, addressed to the respective party at the address set forth above, or to such other addresses that the parties shall designate in writing from time to time. Notices shall be deemed given when personally delivered or three (3) business days after mailing.
28. CAPTIONS. Any captions to or headings of the sections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.
29. INCONSISTENCIES. To the extent that any term or provision of the Contractor's Bid is inconsistent with any term or provision contained in this document, the terms and

provisions contained in this document shall supersede and control this Agreement. To the extent that any term or provision in this agreement is found to be void or unenforceable, nevertheless any and all remaining terms shall remain in full force.

30. **DEFINITIONS.** Terms and phrases, which are defined in any part of this Agreement, shall have the defined meanings wherever used throughout this Agreement. The terms “hereunder” and “herein” and similar terms used in this Agreement shall refer to this Agreement in its entirety and not merely the article, section, sub-section, paragraph or sub-paragraph in which they are used.
31. **STATE LAW.** This Agreement and its application shall be governed by the laws of the Commonwealth of Massachusetts. Any and all disputes shall be brought in the trial court for **Barnstable County**, Massachusetts
32. **ENTIRE AGREEMENT; INTEGRATION.** This Agreement supersedes any and all other Agreements, either oral or in writing, and contains all of the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party or anyone acting on behalf of any party to this Agreement, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing, signed by the party to be charged. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. Failure of any party hereto at any time to require performance by the other party of any provision of this Agreement shall not affect the right of such party to require performance of that provision, and any waiver by any party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement. This Agreement may be executed in any number of counterparts by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to an original and all of which counterparts of this Agreement, taken together, shall constitute but one and the same instrument. Neither Contractor nor Owner shall assign, sublet or transfer any rights under or interest of this Agreement (including, but without limitation, moneys that may become due or moneys that are due) without the prior written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. 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 this Agreement. Contractor and Owner each is hereby bound, and the partners, successors, approved assigns, executors, administrators, and legal representatives of each are hereby bound to the other party to this Agreement and to the partners, successors, approved assigns, executors, administrators, and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

The documents listed below are part of the Contract Documents and are incorporated by this reference as if fully set forth herein. Contractor shall pay particular attention to any and all mitigation measures set forth in the permit documents and shall comply with same.

- A. Contract Specifications
- B. Contract Plans

- C. Addendums
- D. Notice to Bidders
- E. Bidding Requirements
- F. Notice of Award
- G. Notice to Proceed
- H. Agreement
- I. Faithful Performance and Payment Bonds
- J. General and Special Conditions
- K. Submittals and Substitutions
- L. Temporary Facilities and Controls
- M. Environmental Protection
- N. Health and Safety

33. **UNDISPUTED PAYMENTS.** The acceptance by Contractor of an undisputed payment made under the terms of the Contract shall operate as, and shall be, a release to Owner, and their duly authorized agents, from all claim of and/or liability to Contractor arising by virtue of the Contract related to those amounts. Disputed contract claims in stated amounts may be, specifically excluded by Contractor from the operation of the release.
34. **SUBSTITUTION OF SECURITIES.** The Contractor may substitute securities for the amounts retained by the Owner to ensure performance of the Contract in a form acceptable to the Owner(s).
35. **STATEMENT UNDER PENALTY OF PERJURY.** The representations made herein, including the Bidder's licensing information hereinafter furnished, are made under penalty of perjury. The undersigned understands that any bid not containing said licensing information, or containing any information, which is subsequently proven false, shall be considered non-responsive, and shall be rejected by Owner.
36. **UNENFORCEABILITY.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
37. **FINAL PAYMENT SUBJECT TO ACCEPTANCE.** Final Payment is subject to acceptance of the Project by Owner.
38. **FORCE MAJEURE.** Either party's performance under this agreement is subject to acts of God, war (declared or undeclared), government regulation, terrorism, disaster, strikes, civil disorder, curtailment of transportation facilities, or similar occurrence beyond the party's control, making it impossible, illegal or commercially impracticable for one or both parties to perform its obligations under this agreement, in whole or in part. Either party may terminate this agreement without liability for any one or more of such reasons upon written notice to the other party within ten (10) days of such occurrence or receipt of notice of any of the above occurrences.

39. AUTHORIZATION. Each party by signing below hereby warrants that they are fully and duly authorized to enter into this agreement, do so freely and have read and understand the conditions and terms set forth herein along with any and all other documents forming the Contract Documents.

IN WITNESS WHEREOF, the respective parties hereto have hereinto set their hands and seals
the day 15 of September, 2022.

OWNER (TOWN OF CHATHAM)

ATTEST:

BY: *Jill N. G...*
(Name)

Town Manager
(Title)

✓ Sara *[Signature]*

CONTRACTOR

ATTEST:

BY: *Michael Socci*
(Name) Michael Socci

President
(Title)

END OF SECTION