



**AGREEMENT BETWEEN
THE TOWN OF NANTUCKET, MASSACHUSETTS
R.B. OUR COMPANY, INC**

THIS AGREEMENT made effective 11/14, 2018 by and between the TOWN OF NANTUCKET, MASSACHUSETTS a municipal corporation, acting by and through its Town Administration, with offices at 16 Broad Street, Nantucket, Massachusetts 02554 (hereinafter called the "TOWN"), and R.B. OUR COMPANY, INC., whose principal office address and state of incorporation are as set forth on Attachment 'A' (hereinafter called the "CONTRACTOR").

RECITALS

WHEREAS, the TOWN desires to retain the CONTRACTOR to provide certain services for the TOWN, as described below, and the CONTRACTOR is willing to accept such engagement, all on the terms hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 - ENGAGEMENT OF THE CONTRACTOR

- 1.01 The TOWN hereby engages the CONTRACTOR, and the CONTRACTOR hereby accepts the engagement to perform certain services for the TOWN, as described in Article 2.
- 1.02 In the performance of any service under this Agreement, the CONTRACTOR acts at all times as an independent contractor. There is no relationship of employment or agency between the TOWN, on the one hand, and the CONTRACTOR, on the other, and the TOWN shall not have or exercise any control or direction over the method by which the CONTRACTOR performs its work or functions aside from such control or directions which are consistent with the independent contractor relationship contemplated in the Agreement.

ARTICLE 2 - SERVICES OF THE CONTRACTOR

- 2.01 The CONTRACTOR will perform the services described in the Scope of Services set forth on Attachment 'A' (the "Work").
- 2.02 The CONTRACTOR shall report, and be responsible, to the TOWN and its designee as set forth on Attachment 'A'.
- 2.03 There shall be no amendment to the Scope of Services or Work provided for in this Agreement without the written approval of the TOWN. The TOWN shall be under no obligation to pay for any services performed by the CONTRACTOR, which are not explicitly agreed to by the TOWN in writing.

- 2.04** The CONTRACTOR represents and warrants to the TOWN that the CONTRACTOR (including all of its personnel, whether employees, agents or independent Architects or Engineers) will be qualified and duly licensed (if necessary) to perform the services required by this Agreement. CONTRACTOR further agrees to perform its services in a professional manner, and in accordance with the reasonable standard of care implied by law and all applicable local, state or federal ordinances, laws, rules and regulations, all of which are incorporated herein by reference. The CONTRACTOR agrees to use reasonable skill, care and diligence, that the work will be performed in a workmanlike manner, and that the Work, when completed, will be reasonably fit for its intended use. The CONTRACTOR will obtain and pay for any and all permits, bonds and other items required for the proper and legal performance of the Work.
- 2.05** The CONTRACTOR represents and warrants to the TOWN that it is not a party to any agreement contract or understanding, which would in any way, restricts or prohibits it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this Agreement.
- 2.06** All written materials and any other documents (whether in the form of "hard" copies, graphics, magnetic media or otherwise) which are received and produced by the CONTRACTOR pursuant to this Agreement shall be deemed to be "work for hire" and shall be and become the property of the TOWN upon the receipt and production of such items by the CONTRACTOR. The TOWN acknowledges that such materials are being prepared with respect to the specific project contemplated hereby and that any reuse of such materials by the TOWN in connection with any other project shall be at the TOWN's sole risk, unless otherwise agreed to by the CONTRACTOR in writing.
- 2.07** The CONTRACTOR shall be responsible for the professional and technical accuracy, and for the coordination, of all designs, drawings, specifications, estimates and other work or services furnished by CONTRACTOR or its consultants and subcontractors. The CONTRACTOR 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. The CONTRACTOR shall supervise and direct the Work, using its best skills, attention and in a workmanlike manner, which shall not be less than such state of skill and attention generally rendered for projects similar to the subject project in scope, difficulty and location.
- 2.08** The CONTRACTOR shall not use any subcontractors or sub-consultants (not identified herein) for any work required under this Agreement unless the TOWN has approved such use in advance in writing.
- 2.09** Notwithstanding anything to the contrary in this Agreement, the CONTRACTOR shall not be relieved of its obligations under this Agreement by the TOWN's performance, or failure to perform, any of the TOWN's administrative duties under this Agreement, including, but not limited to, the TOWN's review and/or approval of plans, estimates, programs, documents, materials, work and services furnished by CONTRACTOR.

ARTICLE 3 - PERIOD OF SERVICES

- 3.01** Unless otherwise provided in Attachment 'A', the term of this Agreement shall commence on the date hereof and continue until the Work is completed to the TOWN's reasonable satisfaction. In no case shall the term of this AGREEMENT exceed three (3) years.
- 3.02** The CONTRACTOR shall proceed with the Work promptly after receiving Notice to Proceed and will diligently and faithfully prosecute the Work to completion in accordance with the provisions hereof. In any event, the Work shall be completed no later than the date set forth on Attachment 'A'. The CONTRACTOR acknowledges that time is of the essence of this Agreement.
- 3.03** If the CONTRACTOR is delayed in the performance of any of its obligations under this Agreement by the occurrence of an unforeseen event beyond its control such as fire or other casualty, abnormal adverse weather conditions, acts of God (collectively, "Unavoidable Events") which materially and adversely affect its ability to perform the Work, then the time for the CONTRACTOR to perform the Work shall be extended for such time as the TOWN shall reasonably determine is necessary to permit the CONTRACTOR to perform in light of the effects of the Unavoidable Event.
- 3.04** If an Unavoidable Event occurs which, in the TOWN's reasonable determination, makes the performance of the Agreement impossible without the expenditure of additional TOWN funds, the TOWN may, at its option, elect to terminate this Agreement upon thirty (30) days written notice.

ARTICLE 4 - PAYMENTS TO THE CONTRACTOR

- 4.01** The compensation due to the CONTRACTOR shall be paid in the amounts, and in the manner, set forth on Attachment 'B', attached hereto.
- 4.02** The CONTRACTOR will invoice the TOWN at the completion of the work unless otherwise provided on Attachment 'B', with one or more invoices broken down to show the quantity of work performed and the percentage of the entire project completed, categories and amount of reimbursable expenses (if any), and provide such supporting data as may be required by the TOWN.
- 4.03** The TOWN will pay the CONTRACTOR for completed satisfactory work upon review and approval of such invoices by the TOWN or its designee.
- 4.04** This engagement may be subject to budgetary restrictions, which may limit the total amount of funds available for the Work. Accordingly, unless otherwise stated on Attachment 'B', the TOWN will not be obligated to pay any amount in excess of the maximum project amount without the express written approval of the TOWN.
- 4.05** The CONTRACTOR and its sub-contractors shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the CONTRACTOR in the preparation of the documents, as reasonably determined by the TOWN.

ARTICLE 5 - TERMINATION

- 5.01 Either the TOWN or CONTRACTOR may terminate this Agreement with cause, upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to adhere to the terms of this Agreement or fulfill its material duties hereunder in a timely and proper manner.
- 5.02 The TOWN shall have the right to terminate this Agreement for its convenience and without cause upon ten (10) days written notice.
- 5.03 Following termination of this Agreement, the parties shall be relieved of all further obligations hereunder except that:
- 5.04 Unless the TOWN terminates for cause under paragraph 5.1, in which event the TOWN shall be under no obligation to make any payments to CONTRACTOR except for those services satisfactorily provided, the TOWN shall remain responsible for payments for the services satisfactorily performed and, unless this Agreement is for a lump-sum, expenses of CONTRACTOR reasonably accrued prior to the effective date of the notice of termination in compliance with this Agreement (less the value of any claims of the TOWN), all as determined by the TOWN in its sole discretion, but for no other amounts, including, without limitation, claims for lost profits on Work not performed; and
- 5.05 The CONTRACTOR shall remain liable for any damages, expenses or liabilities arising under this Agreement (including its indemnity obligations) with respect to WORK performed pursuant to the Agreement.

ARTICLE 6 - INSURANCE

- 6.01 The CONTRACTOR agrees to indemnify and save the TOWN harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by CONTRACTOR (including all its employees, agents and independent contractors) in performing the Work, or any breach of the terms of this Agreement by such CONTRACTOR and shall reimburse the TOWN for any and all costs, damages and expenses, including reasonable attorney's fees, which the TOWN pays or becomes obligated to pay, by reason of such activities, or breach. The provisions of this Section, 6.1, shall be in addition to and shall not be construed as a limitation on, any other legal rights of the TOWN with respect to the CONTRACTOR, in connection with this Agreement, and shall survive termination or expiration of this Agreement.
- 6.02 Before commencing work the CONTRACTOR shall obtain and maintain at its expense and from insurance companies of an A.M Best rating of A or better, which are licensed to do business in the Commonwealth of Massachusetts, insurance as set forth below. If the CONTRACTOR is permitted to sub-contract a material portion of the Work, or is otherwise identifying a third party to perform services for the Town, the CONTRACTOR shall assure that such sub-contractor or other third party also has such insurance. The CONTRACTOR shall provide:

- (a) Workers' Compensation, covering the obligations of the CONTRACTOR in accordance with applicable Workers' Compensation or Benefits laws.
 - (b) Commercial General Liability Insurance on an occurrence basis with a combined single limit of not less than \$1 million. Coverage is to include premises and operations, coverage for liability of subcontractors. The policy shall contain an endorsement stating that the aggregate limits will apply separately to the work being performed under this Agreement.
 - (c) If vehicles are used in performing the Work, automobile liability insurance of not less than \$1 million combined single limit covering owned, hired and non-hired vehicles.
 - (d) Such additional insurance as may be required by law to be carried by the CONTRACTOR.
 - (e) Such additional insurance as the TOWN may reasonably require, as set forth on Attachment 'A'.
- 6.03** CONTRACTOR shall maintain such insurance during the term of Agreement and give the TOWN twenty (20) days written notice of any change or cancellation of coverage. Each insurer providing policies hereunder shall waive its rights to subrogate claims against the TOWN. The TOWN will be added as an additional named insured with respect to each such policy and such endorsement shall be reflected on a Certificate of Insurance to be delivered to the TOWN upon the execution of this Agreement and at such times thereafter as the TOWN may reasonably request.

ARTICLE 7 - PREVAILING WAGE

- 7.01** The Work subject to this Agreement is covered under the Massachusetts Prevailing Wage Law, G.L. c. 149, §§ 26 - 27 which establishes minimum wage rates for workers on public construction projects. The applicable prevailing wage rates are included in Attachment 'E'.
- 7.02** During the Work, it is the CONTRACTOR'S responsibility to submit weekly payroll records to the Town. Weekly payroll report forms are included in Attachment 'F'. All information set forth on the form must be provided.
- 7.03** The Town is prohibited by law for making payments to the CONTRACTOR for the Work completed without completed payroll records noted herein.

ARTICLE 8 - WARRANTY

- 8.01** One (1) year warranty for parts and labor shall be included.
- 8.02** Any warranty disclaimer for fitness for a particular purpose and warranty of merchantability shall be void.

ARTICLE 9 - GENERAL PROVISIONS

- 9.01** Upon the expiration or the termination of this Agreement for any reason, all data, drawings, specifications, reports, estimates, summaries and other work product which have been accumulated, developed or prepared by the CONTRACTOR (whether completed or in process) shall become the property of the TOWN upon payment for such to the CONTRACTOR and the CONTRACTOR shall immediately deliver or otherwise make available all such material to the TOWN.
- 9.02** Neither party may assign, transfer or otherwise dispose of this Agreement or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party, and any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.
- 9.03** CONTRACTOR certifies that:
- (a) he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;
 - (b) all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and
 - (c) all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.
- 9.04** This Agreement, together with Attachment 'A' (Contractor, Scope of Work, Term), Attachment 'B' (Payments), Attachment 'C' (Tax Compliance Certificate), Attachment 'D' (Certificate of Non-Collusion), Attachment 'E' (Prevailing Wage requirements), Attachment 'F' (Prevailing Wage Payroll Report), and any additional Attachments referred to herein, constitute the entire agreement of TOWN and CONTRACTOR with respect to the matters set forth therein and may not be changed, amended, modified or terms waived except by a writing signed by TOWN and CONTRACTOR. If there is any conflict among the terms set forth in the body of this Agreement and the terms or provisions set forth in the Attachments hereto, or in any other document or law incorporated by reference herein, the terms or provisions contained therein shall be interpreted with the following hierarchy, with the topmost document of the highest priority:

- (a) Applicable federal, state and local laws, rules and regulations.
- (b) Amendments to this Agreement, if any.
- (c) Attachments 'A', 'B', 'C', 'D', 'E' and 'F'.
- (d) This Agreement.
- (e) Any other Attachments to this Agreement.

- 9.05** To the extent the conflict is not resolved by applying the above hierarchy, the conflict shall be resolved in a manner that results in the highest quantity and best quality of goods and services to the TOWN.
- 9.06** This Agreement is governed by the laws of The Commonwealth of Massachusetts and shall be construed in accordance therewith. The parties agree that exclusive jurisdiction for any action arising out of or relating to this Agreement shall lie within courts for Nantucket County, Massachusetts and or the U.S. District Court for Massachusetts and the parties hereby irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any proceeding brought in such location and further irrevocably waive any claims that any such proceeding has been brought in an inconvenient forum.
- 9.07** Any notices required or allowed shall be to the Contractors address as noted herein or the Towns address above by certified mail, return receipt requested.
- 9.08** Notwithstanding anything to the contrary in this Agreement, this Agreement is subject to the appropriation and availability of funds.

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

FOR THE CONTRACTOR:

R.B. Our Company, Inc.
24 Great Western Rd.
Harwich, MA 02645

Signature

Christopher W. Our, President
Printed Name Title

DATE: 11-7-18

FOR THE TOWN:

C. Elizabeth Gibson, Town Manager

C. Elizabeth Gibson

DATE: 11/14/18

CONTRACTOR FEDERAL TAX EIN: 04-2319318

MUNIS VENDOR: 62592

FUNDING SOURCE ORG/OBJ: 01295-27295

As to availability of funds:

Finance Department

11/28/18
Date

ATTACHMENT 'A'

- A.1 **Name of CONTRACTOR:** **Robert B. Our Co., Inc**
- A.2 **CONTRACTOR Address:** **24 Great Western Rd., Harwich, MA**
- A.3 **State of Incorporation:** **Massachusetts**
- A.4 **Town Designee:** **Charles Gibson, Nantucket Police Dept.**
- A.5 **Project Scope:**
- As per Bid Documents, drawings and addenda by Foth/CLE Engineering dated October 9, 2018 and as per bid submission by Contractor on October 26, 2018 all included herein by reference.

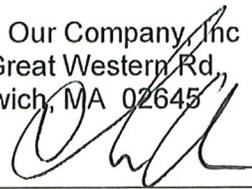
ATTACHMENT 'C'

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. 62C, Sec.49A, the undersigned certifies under the penalties of perjury that it, to the best knowledge and belief of management, has filed all state tax returns and paid all state taxes required under law (if any, are so required).

CONTRACTOR:

R.B. Our Company, Inc
24 Great Western Rd,
Harwich, MA 02645



Signature

Christopher W. Our President
Printed Name Title

11-7-18
Date

Tax ID Number: 04-2319318

ATTACHMENT 'D'

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

CONTRACTOR:

R.B. Our Company, Inc
24 Great Western Rd.
Harwich, MA 02645



Signature

Christopher W. Our President
Printed Name Title

11-7-18
Date

ATTACHMENT 'E'

PREVAILING WAGE LAW RATES

The following pages list wage rates for this project pursuant to the Massachusetts Prevailing Wage Law, G.L. c. 149, §§ 26 - 27; c. 5, § 1; c. 71, § 7A and c. 121B, § 29B.