

AGREEMENT

SECTION 00500

CITY OF NORTHAMPTON, MASSACHUSETTS

DRAINAGE RELOCATION

INDEX

ARTICLE 1 WORK

ARTICLE 2 ENGINEER

ARTICLE 3 CONTRACT TIMES

ARTICLE 4 CONTRACT PRICE

ARTICLE 5 PAYMENT PROCEDURES

ARTICLE 6 CONTRACTOR'S REPRESENTATIONS

ARTICLE 7 CONTRACT DOCUMENTS

ARTICLE 8 MISCELLANEOUS

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2017 by and between the City of Northampton, Massachusetts, acting by and through its Director of Planning & Sustainability, duly authorized therefor, who acts herein solely for said City and without personal liability to itself, (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR).

OWNER AND CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is as described in SECTION 01010, SUMMARY OF WORK.

ARTICLE 2. ENGINEER

The Project has been designed by Kleinfelder Northeast, Inc. of Cambridge, MA, who is hereinafter called ENGINEER and who is to act as OWNER'S representative, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIMES

3.1 Substantial completion must be achieved by the Contractor in or within One Hundred and Fifty-eight (158) consecutive calendar days following the date of commencement of the work as specified in the Notice to Proceed. Full and final completion of all contract work must be achieved by the Contractor in or within One Hundred and Fifty-eight (158) consecutive calendar days following the date of commencement of the work as specified in the Notice to Proceed.

3.2 Substantial Completion Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER One Thousand Dollars (\$1,000.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER. CONTRACTOR shall pay OWNER One Thousand Dollars (\$1,000.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

ARTICLE 4. CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the prices stipulated in the CONTRACTOR'S BID attached to this Agreement.

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments; Retainage. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, and in accordance with the applicable Massachusetts General Law during construction as provided in paragraphs 5.1.1 and 5.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions or, in the event there is no schedule of values, as provided in the General Requirements.
- 5.2 Progress payments will be made in an amount equal to 95 percent of Work completed (with the balance being retainage) but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02.B.5 of the General Conditions.
- 5.3 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."
- 6.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

- 6.3 CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
- 6.4 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 6.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02.A.1 of the General conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02 of the General Conditions. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports, and drawings identified in the Contract Documents with the Contract Documents.

- 6.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.1 Invitation to Bid.
- 7.2 Instructions to Bidders.
- 7.3 CONTRACTOR'S Bid.
- 7.4 This Agreement.
- 7.5 Performance, Payment, and other Bonds.
- 7.6 General Conditions EJCDC Document C-710, 2002 edition.
- 7.7 Supplementary Conditions.
- 7.8 Specifications as listed in table of contents thereof.
- 7.9 Drawings named "Drain Relocation", dated March 2017.
- 7.10 Addenda numbers _____ to _____, inclusive.
- 7.11 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

ARTICLE 8. MISCELLANEOUS

- 8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due and moneys that are 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 with release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 8.4 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 OWNER and 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.

IN WITNESS WHEREOF, OWNER AND CONTRACTOR have signed this Agreement in six original copies each. Three counterpart has been delivered to the OWNER, and one counterpart each has been delivered to the CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on _____, 20__ (which is the Effective Date of the Agreement).

OWNER:

MAYOR OF THE CITY OF NORTHAMPTON,
MASSACHUSETTS

David Narkewicz

DIRECTOR OF PLANNING & SUSTAINABILITY
NORTHAMPTON, MASSACHUSETTS

Wayne Feiden, FAICP

Approved as to the Availability of Appropriation:

City Auditor

Date

Approved as to Form:

City Solicitor

Date

CONTRACTOR

Company Name

CORPORATE SEAL

By: _____
Signature

Name: _____
Type or Print

Title

ATTEST

Address: _____

By: _____
Signature

Name: _____
Type or Print

Phone: _____

Note: If the CONTRACTOR to whom this Contract is awarded is a corporation, an affidavit giving the principal the right to sign the contract must accompany the executed Contract.

END OF SECTION 00500

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Notice of Award

Dated June 12, 2017

Project: Pleasant Street Drainage Relocation	Owner: City of Northampton, MA	Owner's Contract No.: NA
Contract: Pleasant Street Drainage Relocation	Engineer's Project No.: 20164277.003A	
Bidder: George R. Cairns and Sons, Inc.		
Bidder's Address: (send Certified Mail, Return Receipt Requested) 8 Ledge Road, Windham, NH, 03087		

You are notified that your Bid dated June 1, 2017 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for all work associated with this project.

The Contract Price of your Contract is One Million Seven Hundred Ninety Seven Thousand Nine Hundred Sixty Two 00/100 Dollars (\$1,797,962.00).

(Insert appropriate data if Unit Prices are used. Change language for Cost-Plus contracts.)

Six (6) copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

You must comply with the following conditions precedent within [15] days of the date you receive this Notice of Award.

1. Deliver to Kleinfelder the required Contract security (Bonds) as well as Certificates of Insurance as specified in the Instructions to Bidders Article 17, and General Conditions Paragraph 5.01, and Supplementary Conditions Article 5.

Please have your insurance agent name the City of Northampton and Kleinfelder as co-insured on the separate Protective Liability insurance policy described in the Supplemental Conditions paragraph SC 5.05A. Naming the City or Kleinfelder as "Certificate Holders" will not be accepted as meeting the co-insured requirements.

2. Kleinfelder will assemble six (6) complete copies of the Contract Documents.
3. Kleinfelder will forward all six (6) complete copies of the Contract Documents to George R. Cairns and Sons, Inc. for signature.
4. Following signature, George R. Cairns and Sons, Inc. will deliver to the Owner six (6) fully executed counterparts of the Contract Documents directly to the Northampton Office of Planning and Sustainability, attention Wayne Feiden.
5. Other conditions precedent:
None

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

City of Northampton
Owner
By: Wayne Feiden
Authorized Signature
Director of Planning and Sustainability
Title

Copy to Engineer

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