

MEMORANDUM OF AGREEMENT

CITY OF WALTHAM

and the

TOWN OF BELMONT

This Memorandum of Agreement (the "Agreement") is made as of the 21st day of June, 202~~2~~³, by and between the City of Waltham (CITY), a Massachusetts municipality, having a place of business at 610 Main Street, Waltham, MA 02452 and the Town of Belmont (TOWN), a Massachusetts municipality, having a principal place of business at 455 Concord Avenue, Belmont, MA 02478, acting by and through its Select Board, (hereinafter collectively the "PARTIES").

WHEREAS the PARTIES acknowledge that there is a substantial need for the reconstruction of the Beaver Brook Culvert and flood wall located under Trapelo Road, Bridge No. B-07-015 (Exiting BIN: 7VB) / W-04-039 (Existing Bin: 8JN) (the "PROJECT"); and

WHEREAS the replacement of the culvert and construction of the flood wall will mutually benefit both PARTIES; and

WHEREAS the work to be performed for the PROJECT includes, but is not limited to, the demolition of the existing culvert and construction of a new culvert and wingwalls, demolition of an existing stone wall and construction of a new block wall on the downstream side, minor drainage work, sidewalk construction, paving, guardrail and other minor work on Trapelo Road at the Waltham/Belmont town line as set forth in the 2022 Invitation to Bid and addendums thereto, which are hereby incorporated by reference; and

WHEREAS the PARTIES have agreed to equally share the cost of these infrastructure improvements, and both PARTIES have appropriated funds necessary to cover the shared cost of the PROJECT.

NOW, THEREFORE, in consideration of the promises and mutual benefits to be derived by the PARTIES hereto, the PARTIES hereby agree as follows:

1. The PARTIES acknowledge and agree that the cost of the PROJECT, in accordance with the proposed bid award to E.T. and L. Corp., plus a 2.5% contingency and construction management services provided by the BSC Group, shall be \$1,783,950 as follows:

Construction	\$1,631,785
2.5% Contingency	\$ 40,795
BSC Services	<u>\$ 111,370</u>
Total	\$ 1,783,950

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2. The PARTIES agree that each party will pay 50% of the cost outlined in Paragraph 1, for a total of \$891,975 per Party.
3. The CITY agrees to be the Party responsible for managing the construction of the PROJECT, including, but not limited to: procurement, entering into contracts, managing BSC's oversight of all construction and construction-related activities, and managing the payment of all invoices from contractors and vendors within the scope of the approved contract.
4. Prior to the CITY issuing a notice to proceed to the contractor, the TOWN agrees to provide the CITY with payment of \$891,975 to fund the TOWN's share of the PROJECT. The CITY shall accept and use said funds to pay the TOWN's share of bills and receipts for the PROJECT. The CITY agrees to timely issue all approved payments to contractors and vendors.
5. In the event the total cost of the PROJECT is less than projected, the CITY agrees to return to the TOWN the TOWN's equal share of unexpended funds.
6. The CITY shall not unilaterally agree to any change orders which would increase the cost of the PROJECT without written approval from the TOWN. In the event the PARTIES mutually agree to change orders increasing the overall cost of the PROJECT, the TOWN agrees to pay its 50% share of the cost for agreed-upon change orders.
7. This agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither party shall assign or transfer any interest in the Agreement without the written consent of the owner.
8. Any and all notices, or other communications required under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service to the parties at the addresses set forth herein or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service, or, if by private overnight or other delivery service, when deposited with such delivery service.
9. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both PARTIES would be substantially or materially prejudiced.
10. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts. Any dispute arising out of this Agreement shall be brought in either Waltham District Court or Middlesex Superior Court, depending on the amount in controversy.




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11. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the PARTIES with respect to the matters described. This Agreement supersedes all prior agreements, negotiation and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

In witness whereof, the parties hereto have executed this Agreement on the day and year first above written.

TOWN OF BELMONT


TOWN ADMINISTRATOR,
On behalf of the SELECT BOARD

CITY OF WALTHAM



MAYOR
6/21/2023


Director of Community Development
3/15/23

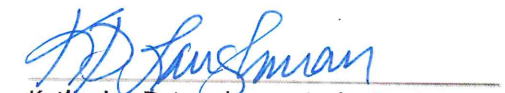

Paul Centofanti, City Auditor


Robert Winn, P.E., City Engineer

Approved as to form, not substance:


Town Counsel
George A. Hall, Jr.
3/14/2023

Approved as to form, not substance:


Katherine D. Laughman, Ass't. City Solicitor
June 20, 2023