

Bog Maintenance Agreement

This Contract is entered into on, or as of, this _____ day of _____, 2020_ by and between the Town of Carlisle, Massachusetts (the "Town"), and Mark Duffy, Great Brook Dairy (the "Contractor").

WHEREAS, the Town seeks services for the maintenance of the Carlisle Cranberry Bog general area of the Cranberry Bog Conservation Land during the transition from cranberry harvesting to other agricultural practices; and

WHEREAS, the Contractor desires to provide such services, subject to the terms and conditions provided herein;

NOW, THEREFORE, the Parties agree as follows:

1. Scope of Services: The Contractor shall provide the following services:
 - (a) Grounds maintenance of the Bog House, utilities, yard mowing and to maintain liability insurance.
 - (b) Removal, as needed, of debris from water control structures to assist adequate water flow.
 - (c) Drainage maintenance and improvements within the bog areas
 - (d) Mowing around the bog area trails and along the surface of the dams
 - (e) Routine maintenance of ~~the~~ Cranberry Bog Dams
 - (f) *Mow a minimum of 65% of the total bog surface area. Beaver/muskrat/rainfall activity may make some areas inaccessible. (Western areas have limited areas of unstable surface and East section may not be accessible with low ground pressure equipment.)*

The Contractor shall, pursuant to the terms of this Contract, provide all the supplies, materials and equipment, and perform all the labor, services and supervision necessary and proper to the performance of the Contract and to accomplish any and all work incidental thereto.

2. The contract price to be paid to the Contractor by the Town of Carlisle is: Up to \$12,000.
3. Payment shall be made to the Contractor for Services performed based upon the hourly rate or unit price schedule attached as **Exhibit C**, subject to the upset limit of \$12,000. Compensation for services performed by authorized Subcontractors shall be on the basis of the actual costs to the Contractor unless otherwise specified herein. The Town shall not be obligated to pay for any amount in excess of the upset limit of \$10,000, unless the Town gives the Contractor a written notice authorizing the further performance of Services and the incurring of additional costs for such Services.
4. Term of Contract and Time for Performance: All Services provided under this Contract shall be complete by the Contractor on or before June 30, 2021 unless extended pursuant to a provision for extension contained in the Contract Documents at the sole discretion of the Town.
5. Employment: (unless exempt for agricultural workers)

- 5.1 Restriction on Hours: No laborer, worker, mechanic, foremen or inspector working within the Commonwealth of Massachusetts in the employ of the Contractor, subcontractors or other persons doing or contracting to do the whole or part of the work contemplated by this Contract, shall be required or permitted to work more than eight (8) hours in any one calendar day; or more than forty-eight (48) hours in one week, or more than six (6) days in any one week in full compliance with the provisions of M.G.L. c. 149, § 34, except in cases of emergency.
- 5.2 Weekly Wages: M.G.L. c. 149, § 148, requires the weekly payment of employees.
- 5.3 Register of Employees: The Contractor shall keep a true and accurate register of all mechanics, teamsters, chauffeurs and laborers employed upon the work contemplated by this Contract showing the name, address and occupational classification of each such employee, the hours worked by and the wages paid to each such employee, and shall furnish the Massachusetts Department of Labor and Industries upon its request a true statement thereof.
- 5.4 Wage Rates (M.G.L. c. 149, §26, et. seq.): In conformity with the provisions of the laws of the Commonwealth of Massachusetts, the minimum wages paid to craftsmen, teamsters, mechanics, laborers and apprentices shall not be less than those established by a schedule which has been prepared by the Department of Labor and Industries. Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.
- 5.5 “Right To Know” Law: If the Contractor uses or stores toxic or hazardous substances it is subject to M.G.L. c.111F, §2, the “Right To Know” law, and regulations promulgated by the Department of Public Health, the Department of Environmental Protection and the Department of Labor and Industries; and must post a Workplace Notice obtainable from the Department of Labor and Industries.
- 5.6 Preference to Veterans and Citizens in Public Works: M.G.L. c. 149, §26 is incorporated by reference herein.
6. Payment of Subcontractors: Payment to subcontractors, if any, shall be made in accordance with M.G.L. c.30, §39F, which is incorporated by reference herein.
7. Performance
 - 7.1. Prosecution of Work; Responsibility for Employees and Agents: The Contractor shall give attention constantly to the faithful prosecution of the work and shall keep the same under its personal control. It shall be responsible for all the acts and omissions of its employees, subcontractors and of all persons directly or indirectly employed by it in connection with the prosecution of this work.
 - 7.2. Inspection of Work: At all times relevant to the Contract, the Contractor shall permit the Town to review or inspect the work without formality or other procedure.

- 7.3. Defective Work: The Contractor shall, after receiving written notice that certain work or construction is improper, unsafe or defective or that such construction in any way fails to conform to the Contract, forthwith remove such unsafe or defective construction and reconstruct the same in a manner remedying the construction after being so notified, the Town may cause such defective work to be remedied or replaced and the Town may deduct the cost thereof from any moneys due or to become due the Contractor.
- 7.4. Suspension of Work - Contractor's Failure(s): The Town shall have the authority to suspend the work wholly or any part thereof for such period as the Town shall deem necessary due to failure of the Contractor to carry out orders given or to perform any provisions of the Contract. Upon receipt of written order from the Town, the Contractor shall immediately suspend the work or such part thereof in accordance with the order. No work shall be resumed when conditions so warrant, or deficiencies have been corrected and the condition of the Contract as ordered or approved in writing by the Town. No allowance of any kind will be made for suspension of work by order of the Town.
- 7.5. Suspension of Work - Act of Nature: Should the Contractor be obstructed or delayed in the prosecution of the work as a result of damage which may be caused by lightning, earthquake, rain, storm or cyclone or similar act of nature, then the time fixed for completion may be extended for a period equivalent to the time lost by reason of any of the forgoing causes. No such extension shall be made unless a claim therefor is presented in writing to the Town within forty-eight (48) hours of the occurrence of any such delay. The Contractor shall have no claim against the Town for damages on account of such delay. The duration of the extension itself must be certified to by the Town.
- 7.6. Delay or Suspension of Work - All Other Circumstances: The Contractor agrees that it shall have no claim for damages of any kind on account of any delay in commencement of the work. Post commencement, the Contractor shall have no claim for damages of any kind on account of any delay or suspension of any portion of the work except as hereinafter provided. Adjustments, if any, in the contract price due to the suspension, delay, interruption or failure to act by the Town shall be governed by the provisions of M.G.L. c. 30, §39(O), which is incorporated by reference herein. Provided, further, that no adjustment shall be made if the performance of the Contractor would have been prevented by other causes, even if the work had not been so suspended, delayed or interrupted by the Town. Provided, further, that a subcontractor shall have the same rights against the Contractor for payment for an increase in the cost of its performance as the provisions of this Article gives the Contractor against the Town, but nothing herein shall in any way change, modify or alter any other rights which the Contractor and subcontractor may have against each other.
- 7.7. Additional Work and Contractors: The Town may award other contracts for additional work. The Contractor shall cooperate fully with other contractors and carefully fit its own work to that of other contracts as may be directed by the Town. The Contractor shall not commit or permit any acts which will interfere with the performance of work by any other contractor.

7.8. Compliance With Laws: The Contractor shall keep itself fully informed of and comply with all existing, state and municipal laws and regulations and all orders and decrees of any governmental bodies or tribunals (hereinafter also referred to as “laws”) having jurisdiction in any manner which affect this Contract or construction, including but not limited to such laws affecting those engaged or employed in the work, the materials used in the work or in any way affecting the conduct of the work. If any clause in this Contract does not conform to such law, then such clause shall be void and the law operative shall be inserted in lieu thereof. If any discrepancy or inconsistency is discovered in the specifications, drawings, or contract documents in violation of the law, the Contractor shall forthwith report the same in writing to the Town. The Contractor shall cause its employees, agents and subcontractors to also observe and comply with all such laws. It shall protect and indemnify the Town and its officials, employees and duly appointed agents against any claim or liability arising from or based on any violation, whether by the Contractor or its officials, employees or subcontractors, of any such law.

7.9. Dig Safe Laws: The Contractor shall fully comply with the Dig Safe Laws.

8. Insurance:

8.1. The Contractor shall purchase from, and maintain in a company or companies lawfully authorized to do business in the Commonwealth of Massachusetts, and to which the Town has no reasonable objection, insurance for protection from claims under workers’ compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor’s operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Town.

1. Commonwealth of Massachusetts Statutory Worker’s Compensation and other benefits as required under the General Laws of Massachusetts, including Employer’s Liability Part B: \$500,000/\$500,000/\$500,000.
2. Broad form Commercial General Liability, written on a “per occurrence” basis with an aggregate cap no less than three (3) times the required limit: \$1,000,000 C.S.L.
 - Property Damage Liability shall include coverage for X-C-U hazard of explosion, collapse, and damage to underground property.
3. Umbrella or Excess Liability coverage following form of underlying General, Automobile and Employers’ Liability Coverage: Minimum of \$2,000,000 C.S.L. over primary insurance with no more than \$10,000 Retention.
4. Comprehensive Automobile Liability covering owned, non-owned, and hired or borrowed vehicles: \$1,000,000 C.S.L.

8.2. The above insurance policies shall also be subject to the following requirements:

1. Whenever applicable, including, but not limited to Contractor's Broad Form General Liability Insurance, all insurance coverage shall be on an "occurrence basis" and not a "claims-made basis".
 2. Certificates of Insurance and copies of policies acceptable to the Town shall be addressed to and filed with the Town prior to commencement of the work. Renewal certificates shall be filed with the Town at least thirty (30) days prior to the expiration date of required policies.
 3. All premium costs shall be included in the Contractor's bid. The Contractor shall be responsible for the cost of any and all deductibles.
 4. The Town (including its officials, employees' agents and representatives) shall be named as an additional insured on Contractor's General Liability, Automobile Liability and Umbrella or Excess Liability Policies.
- 8.3 Neither the Town's authority to review certificates and policies of insurance nor its decision to raise or not to raise any objections about those certificates and policies, shall in any way give rise to any duty or responsibility on the part of the Town to exercise this authority for the benefit of the Contractor, any Subcontractor, Sub-subcontractor, or Supplier, or any other party.
- 8.4 Insufficient insurance shall not release the Contractor from any liability for breach of its obligations under this Contract.

9. Other Statutory Requirements:

- 9.1 Record Keeping and Management Controls: The Contractor shall comply with M.G.L. c.30, §39R.
- 9.2 Non-Discrimination: The Contractor shall not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, the procurement of material and rental of equipment, employment decisions or in any aspect of the performance of this Contract. The Contractor shall also comply with all applicable laws and regulations pertaining to non-discrimination. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, each potential subcontractor shall be notified by the Contractor of the Contractor's obligations under this Contract relative to non-discrimination and it shall be a term of each contract with a subcontractor in connection with the performance of this work under this Agreement, that the subcontractor be bound to non-discrimination and equal opportunity requirements equivalent to the obligations of the Contractor hereunder.
- 9.3 This Contract will be constructed and governed by the provisions of applicable federal, state and local laws and regulations and wherever any provision of this Contract or Contract Documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of the General Laws are incorporated by reference into this Contract.

- 9.4 Wherever applicable law mandates the inclusion of any term or provision into a municipal contract, this section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.
- 9.5 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the contract. If the Contractor performs the Contract in violation of any applicable laws or regulation, the Contractor shall bear all costs arising therefrom.
10. Subject to Appropriation: Notwithstanding anything in the Contract Documents to the contrary, any and all payments that the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant.
11. The Contractor's Breach and the Town's Remedies: Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and the Town of Carlisle shall have all the rights and remedies provided in the Contract and Contract Documents, including, but not limited to, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity, or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above.
12. Claims by Contractor and Liability of Town: All claims by the Contractor against the Town shall, unless otherwise provided by law, be initiated by a written claim submitted to the Town no later than seven (7) calendar days after the event or the first appearance of the circumstances causing the claim. The claim shall set forth in detail all known facts and circumstances supporting the claim. The Contractor shall continue its performance under this Contract regardless of the submission or existence of any claims.

The liability of the Town under this Agreement is limited to the compensation provided herein for work actually performed to the extent that such compensation is permitted by law. The Town's liability shall in no event include liability for incidental, special or consequential damages or lost profits or for damages of loss from causes beyond the Town's reasonable control.

13. Conflict of Interest: Both the Town and the Contractor stipulate to the applicability of the State Conflict of Interest Law (M.G.L. c.268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the law's applicability to the performance of this Contract, and, by executing the Contract, the Contractor certifies to the Town that neither it nor its agents, employees, or Subcontractors, are in violation of M.G.L. c.268A.
14. Certification of Tax Compliance: By execution of this Agreement the Contractor, pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, certifies under the penalties of perjury that it has, to the best knowledge and belief of the person(s) who signed this Agreement on the Contractor's behalf, filed all state tax returns and paid all state taxes required under law.
15. Indemnification: To the fullest extent permitted by law the Contractor agrees to indemnify and hold harmless the Town from all suits, actions, claims, demands, damages, losses, expenses and costs, including attorneys' fees, of every kind and description which the Town may incur or suffer resulting from, in connection with, or arising out of any act, error or omission of, or breach of

contractual duties to the Town by, the Contractor, its agents, servants, employees or Subcontractors. The extent of the foregoing indemnification and hold harmless provisions shall not be limited by any provision of insurance required by this Agreement and shall survive the termination of this Agreement.

16. Termination:

16.1. The Town may terminate this Contract as follows:

(a) Without cause, on ten days' prior written notice; or

(b) Immediately, by written notice to the Contractor, if the Contractor violates any of the provisions of this Contract, or fails to perform or observe any of the terms, covenants or conditions of this Contract, or abandons in whole or in part its Services, or becomes unable to perform its Services, hereunder. For purposes of this Paragraph 16, it is acknowledged that the Contractor's Services under this Contract are personal services and may not be assumed by or assigned by a trustee in bankruptcy.

16.2 In the event of termination, the Contractor shall promptly deliver to the Town all Materials, including all documents, work papers, drawings, plans, specifications and other tangible work product or materials pertaining to the Services performed under this Contract to the time of termination, and thereupon the Town shall pay to the Contractor any unpaid and undisputed balance owing for Services rendered prior to the date of termination. Any termination of this Contract shall not affect or impair the right of the Town to recover damages occasioned by any default of the Contractor or to set off such damages against amounts otherwise owed to the Contractor.

17. Assignment: Assignment of this Contract is prohibited, unless assignment is provided for expressly in the Contract Documents.

18. Liability of Public Officials: To the full extent permitted by law, no official, employee, agent or representative of the Town of Carlisle shall be individually or personally liable on any obligation of the Town under this Contract.

19. Notices: Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth in the Contract. Notice to the Town shall be deemed sufficient if sent to the Timothy Goddard, Town Administrator, 66 Westford Street, Carlisle, MA 01741.

20. Binding on Successors: This contract shall be binding upon the Contractors, its assigns, transferees, and/or successors in interest and, where not corporate, the heirs and estate of the Contractor.

21. Complete Contract: This instrument, together with its endorsed supplements, and the other components of the Contract Documents, constitutes the entire Contract between the parties, with no agreements other than those incorporated herein.

- 22. Severability: If any provision of this contract shall be found invalid for any reason, such invalidity shall be construed as narrowly as possible and the balance of the contract shall be deemed to be amended to the minimum extent necessary to provide to the parties substantially the benefits set forth in this contract.
- 23. Certification of Non-Debarment or Suspension: By execution of this Contract, the Contractor, pursuant to M.G.L. c. 29, § 29F, certifies under the penalties of perjury that it is not presently debarred or suspended from doing public construction work in the Commonwealth pursuant to said section, or any applicable debarment or suspension provisions of any other chapter of the Massachusetts General Laws or any rule or regulation promulgated thereunder.
- 24. Amendments: This Contract may be amended or modified only by written instrument duly executed by the parties.
- 25. Independent Contractor: The Contractor is not an employee or agent of the Town but is an independent contractor.
- 26. No Privity of Contract Between Town and Other Parties: Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Town and any person or entity other than the Contractor.

TOWN:

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Approved as to availability of funds:

By: _____

Title: _____