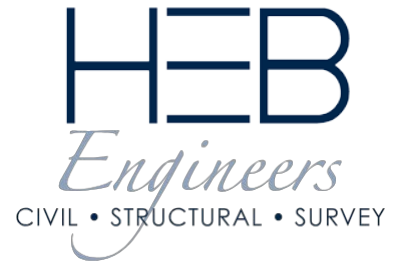


CONTRACT AMENDMENT #3



Date: June 18, 2021

Project No: 2020-003

To: Jim Wheeler
City of Berlin
168 Main Street
Berlin, NH 03570

Phone: (603) 752-7532
Email: jwheeler@berlinnh.gov

From: Christopher R. Fournier, PE

Email: cfournier@hebengineers.com

Re: Mason Street Bridge #238/055, Berlin, NH

Dear Jim,

In accordance with our original Letter Agreement dated January 21, 2020, we propose to render additional professional engineering services in connection with the **Mason Street Bridge #238/055, located over an unnamed brook in Berlin, NH** hereinafter called the "Project." You are expected to furnish us with full information as to your requirements, including any special or extraordinary consideration for the Project or special services as needed, and to make available all pertinent existing information.

Our scope of services is outlined in detail in the attached Exhibit A dated June 18, 2021.

See the General Provisions (Terms and Conditions) on the back of this page for a more detailed description of our and your obligations and responsibilities.

See the General Provisions (Terms and Conditions) on the back of this page for a more detailed description of our and your obligations and responsibilities.

You will pay us for our services a lump sum of **\$1,800 for Phase 006 – Bridge Joint Procurement**. You will You will pay us for our services, including travel, on an hourly basis in accordance with fee schedule in effect at the time services are rendered, estimated at **\$45,000, plus reimbursable expenses estimated at \$5,000 for Phase 007 – Construction Administration**. See attached Exhibit A for a detailed description of our fees.

We would expect to start our services promptly after receipt of your acceptance of this proposal, and to complete our work as described in attached Exhibit A. If there are protracted delays for reasons beyond our control, we would expect to renegotiate with you the basis for our compensation in order to take into consideration changes in price indices and pay scale applicable to the period when our services are in fact being rendered. This proposal is void after 30 days.

Upon authorization of this agreement, the Contract Amendment, attached Exhibit A, the General Provisions, and the fee schedule shall become part of the original agreement identified above. If you agree with these arrangements, we would appreciate your returning a copy of this agreement **signed below and initialed on the attached General Provisions by an authorized representative**.

Accepted this _____ day of _____ 2021

Very truly yours,
HEB Engineers, Inc.

By: _____
Authorized Representative

By: 
Christopher R. Fournier

Printed Name and Title:

Title: Vice President

P:\Jobs\2020\2020-003 Berlin - Mason Street Bridge, Berlin, NH\Administration\Contract Amendment #3 Mason Street Bridge Procurement & Const Admin 06-11-21.docx

HEB Engineers, Inc. • www.hebengineers.com

New Hampshire: Office (603) 356-6936 • Fax (603) 356-7715 • PO Box 440 • 2605 White Mountain Highway • No. Conway, NH 03860
Maine: Office (207) 803-8265 • PO Box 343 • 103 Main Street • Suite 6 • Bridgton, ME 04009

GENERAL PROVISIONS

(Terms and Conditions)

Read & Initialed _____

Access to Site

Unless otherwise stated, the City will provide access to the site for activities necessary for the performance of the services. HEB Engineers, Inc. (HEB) will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage.

Fee

The total fee, except when stated as a lump sum, shall be understood to be an estimate, based upon Scope of Services. Where the fee arrangement is to be on an hourly basis, the rates shall be in accordance with our latest fee schedule. Reimbursable expenses will be billed to the City at actual cost plus 15 percent.

Billings/Payments

Invoices for services will be submitted monthly and are due when rendered and shall be considered PAST DUE if not paid within 30 days of the invoice date. A monthly service charge of 1.5% of the unpaid balance (18% true annual rate) will be added to PAST DUE accounts. If the City fails to make payment when due and HEB incurs costs to collect overdue sums, the City agrees that all such collection costs shall be payable to HEB. Collections costs shall include, without limitation, legal fees, collection fees and expenses, court costs, and reasonable HEB staff costs at standard billing rates for HEB's time spent in collection efforts. If the City fails to make payment when due or is in breach of this Agreement, HEB may suspend performance of services upon ten (10) calendar days' notice to the City. HEB shall have no liability whatsoever to the City for any costs or damages as a result of suspension caused by any breach of this Agreement by the City. Upon payment in full by the City, HEB shall resume services and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense for HEB to resume performance. Retainers shall be credited on the final invoice. If the City fails to make payment to HEB in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by HEB.

Indemnifications

The City agrees, to the fullest extent permitted by law, to indemnify and hold HEB harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the City's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the City is legally liable, and arising from the project which is the subject of this agreement.

HEB agrees, to the fullest extent permitted by law, to indemnify and hold the City harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by HEB's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom HEB is legally liable, and arising from the project which is the subject of this agreement.

Neither the City nor HEB shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

Insurance

HEB will provide the City with certificates of insurance from its insurance company which outlines HEB's professional business coverage and states that City will be advised in writing in advance of any lapse of such coverage. City must approve coverages as adequate in advance of the undertaking of any work contemplated herein.

Termination of Services

Either party may terminate this agreement for cause upon giving written notice to the other party not less than seven (7) calendar days' written notice for: substantial failure by the other party, assignment of this agreement or transfer of the project to any other entity without prior written consent, suspension of the project by the City for more than ninety (90) days or material changes in condition necessitate such changes. In the event of termination, the City shall pay HEB within 15 days for all services rendered to date of termination, all reimbursable expenses, and reimbursable termination expenses.

Ownership of Services

All reports, drawings, specifications, computer files, field data, notes, other documents and instruments prepared by HEB as instruments of service shall remain property of HEB. HEB shall retain all common law, statutory and other reserved rights, including the copyright thereto. HEB has the right to use photographs of the project site in all available marketing avenues.

Applicable Law

Unless otherwise specified, this agreement shall be governed by the laws of the State of New Hampshire.

Claims & Disputes

In an effort to resolve conflicts that arise during design or construction of the Project or following completion, the City and HEB agree that all disputes in excess of \$5,000, arising out of or relating to this agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. Disputes under \$5,000 shall be decided by Small Claims Court.

Pollution Exclusion

Both parties acknowledge that HEB's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event HEB or any other party encounters any hazardous or toxic materials, or should it become known to HEB that such materials may be present on or about the jobsite that may affect the performance of HEB's services, HEB may, at its option and without liability for consequences or any other damages, suspend performance of the services under this agreement until the City has abated the materials and the jobsite is in full compliance with all applicable laws and regulations.

Additional Services

Additional services are those services not specifically included in the scope of services stated in the agreement. HEB will notify the City of any significant change in scope which will be considered additional services. The City agrees to pay HEB for any additional services in accordance with our latest fee schedule.

Design Without Construction Phase Services

It is understood and agreed that if HEB's services under this agreement do not include project observation or review or any other construction phase services, that such services will be provided for by the City. In this case, the City assumes all responsibility for interpretation of the Contract Documents and for construction observation. The City waives any claims against HEB that may be in any way connected thereto. In addition, the City agrees, to the fullest extent permitted by law, to indemnify and hold harmless HEB, its officers, directors, employees and subconsultants (collectively, HEB) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or in any way connected with the performance of such services. If the City requests that HEB provide any specific construction phase services, and if HEB agrees in writing to provide such services, then they shall be compensated for as Additional Services as provided above, and such services shall become part of this agreement.

Change in Services

HEB's commitments as set forth in this Agreement are based on the expectation that all of the services described in this Agreement will be provided. In the event the City later elects to reduce HEB's scope of services, the City hereby agrees to release, hold harmless, defend and indemnify HEB from any and all claims, damages, losses or costs associated with or arising out of such reduction of services.

Unauthorized Changes

In the event the City, the City's contractors or subcontractors, or anyone for whom the City is legally liable makes or permits to be made any changes to any reports, plans, specifications or other construction documents prepared by HEB without obtaining the HEB's prior written consent, the City shall assume full responsibility for the results of such changes. Therefore the City agrees to waive any claim against HEB and to release HEB from any liability arising directly or indirectly from such changes. In addition, the City agrees, to the fullest extent permitted by law, to indemnify and hold harmless HEB from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, arising from such changes.

In addition, the City agrees to include in any contracts for construction appropriate language that prohibits HEB or any subcontractors of any tier from making any changes or modifications to HEB's construction documents without the prior written approval of HEB and that further requires HEB to indemnify both HEB and the City from any liability or cost arising from such changes made without such proper authorization.

Construction Observation

HEB shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the City and HEB, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow HEB staff, as experienced professionals, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.

Based on this general observation, HEB shall keep the City informed about the progress of the Work and shall endeavor to guard the City against deficiencies in the Work. If the City desires more extensive project observation or full-time project representation, the City shall request that such services be provided by HEB as Additional Services in accordance with the terms of this Agreement.

HEB shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

HEB shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. HEB does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

Jobsite Safety

Neither the professional activities of HEB, nor the presence of HEB or its employees and subconsultants at a construction/project site, shall relieve the General Contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. HEB and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The City agrees that the General Contractor shall be solely responsible for jobsite safety, and warrants that this intent shall be carried out in the City's contract with the General Contractor. The City also agrees that the City, HEB and HEB's subconsultants shall be indemnified by the General Contractor and shall be made additional insured under the General Contractor's policies of general liability insurance.

Request for Clarification or Interpretation

The Contractor may, after exercising due diligence to locate required information, request from HEB clarification or interpretation of the requirements of the Contract Documents. HEB shall, with reasonable promptness, respond to each Contractor's requests for clarification or interpretation. However, if the information requested by the Contractor is apparent from field observations, is contained in the Contract Documents or is reasonably inferable from them, the Contractor will be responsible to the City for all reasonable costs charged by HEB to the City for the Additional Services required to provide such information.

Shop Drawing Review

HEB shall review and approve or take other appropriate action on the Contractor submittals, such as shop drawings, product data, samples and other data, which the Contractor is required to submit, but only for the limited purpose of checking for conformance with the design concept and the information shown in the Construction Documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. HEB's review shall be conducted with reasonable promptness while allowing sufficient time in HEB's judgment to permit adequate review. Review of a specific item shall not indicate that HEB has reviewed the entire assembly of which the item is a component. HEB shall not be responsible for any deviations from the Construction Documents not brought to the attention of HEB in writing by the Contractor. HEB shall not be required to review partial submissions or those for which submission of correlated items have not been received.

Rejection of Work

HEB shall have the authority to reject any Work that is not, in the judgment of HEB, in conformance with the Construction Documents or work plans. Neither this authority nor HEB's good-faith judgment to reject or not reject any Work shall subject HEB to any liability or cause of action to the Contractor, subcontractors or any other suppliers or person performing work on this project.

Record Drawings

If required and agreed upon between HEB and City, upon completion of the Work, HEB shall compile for and deliver to the City a reproducible set of Record Documents based upon the marked-up record drawings, addenda, change orders and other data furnished by the Contractor. These Record Documents will show significant changes made during construction. Because these Record Documents may be based on unverified information provided by other parties, which HEB shall assume to be reliable, HEB cannot and does not warrant the accuracy of information provided by other parties.

Public Responsibility

Both the Client and HEB owe a duty of care to the public that requires them to conform to applicable codes, standards, regulations and ordinances, principally to protect the public health and safety. The Client shall make no request of HEB that, in HEB's reasonable opinion, would be contrary to HEB's professional responsibilities to protect the public. The Client shall take all actions and render all reports required of the Client in a timely manner. Should the Client fail to take any required actions or render any required notices to appropriate public authorities in a timely manner, the Client agrees HEB has the right to exercise its professional judgment in reporting to appropriate public officials or taking other necessary action. The Client agrees to take no action against or attempt to hold HEB liable in any way for carrying out what HEB reasonably believes to be its public responsibility.

Delays

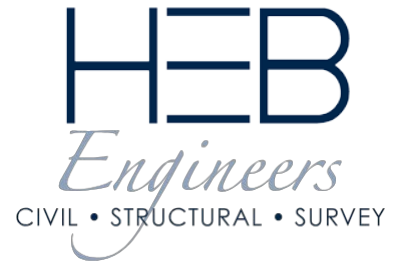
The Client agrees that HEB is not responsible for damages arising directly or indirectly from any delays for causes beyond HEB's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in a timely manner; failure of performance by the Client or the Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

In addition, if the delays resulting from any such causes increase the cost or time required by HEB to perform its services in an orderly and efficient manner, HEB shall be entitled to a reasonable adjustment in schedule and compensation.

CONTRACT AMENDMENT #3

EXHIBIT A

SCOPE OF SERVICES
FOR
MASON STREET BRIDGE #238/055
OVER THE
SMITH CANAL



Prepared for: City of Berlin

June 18, 2021

Prepared by: HEB Engineers, Inc.

This exhibit is attached to and becomes part of Contract Amendment #3, dated June 18, 2021, and in accordance with our original Letter Agreement, dated January 17, 2020, between HEB Engineers, Inc. (HEB), Engineer, and the City of Berlin (City). The purpose of the work is to provide engineering services for the preservation of the above-mentioned bridge.

Project Understanding:

- The City considers RM Piper to be the contractor who will proceed with the bridge preservation project, although formal award and notice to proceed cannot occur until the City budget is passed in July. In order for RM Piper to achieve the required project timeframe, they must begin procurement of long lead items. HEB has been asked to provide a contract, between the City and RM Piper, only for the procurement of those items, with the intention that it will be rolled in with the overall contract for the bridge construction, once the City budget is passed.
- Additionally, the City would like HEB to perform construction administration services during the 2021 construction period.

Bridge Joint Procurement: Phase 006

The purpose of this phase is to produce documents necessary for the procurement of the bridge joints by the Contractor. HEB will provide the following services during this phase:

- Prepare Procurement Manual for the bridge joints.
- Coordinate with the City and Contractor to execute the contract documents.

Deliverables will be: Procurement Manual.

Number of meetings attended will be: None anticipated.

Number of site visits will be: Note anticipated.

Construction Administration: HEB Phase 007

The purpose of this phase is to administer construction based on the Contract Documents. HEB will provide the following services for the project during this phase:

- Hold a pre-construction meeting with City Official(s) and the Contractor to discuss project expectations.
- Review submittals from the Contractor required to conform to the project specifications.
- Respond to Contractor's requests for information (RFI), render interpretations, and prepare detailed sketches as necessary to supplement the Contract Documents.
- Attend progress meetings with City Officials(s) and the Contractor.
- Provide part-time field observation by an HEB Engineer to review construction progress relative to the construction documents.

HEB Engineers, Inc. • www.hebengineers.com

New Hampshire: Office (603) 356-6936 • Fax (603) 356-7715 • PO Box 440 • 2605 White Mountain Highway • No. Conway, NH 03860

Maine: Office (207) 803-8265 • PO Box 343 • 103 Main Street • Suite 6 • Bridgton, ME 04009

- Prepare a field report for each site visit, which will outline the work performed, field observations, items discussed, scheduled work, and photos.
- Review the Contractor's quantities and Payment Applications for recommendation of payment.
- Coordinate Quality Assurance testing by a material testing Subconsultant.
- Prepare Certificate of Substantial Completion upon substantial completion and prepare a "punch list" of those items that need to be corrected prior to approval of final payment to the Contractor.
- Conduct a final walkthrough with Town Official(s) and the Contractor.
- Prepare closeout documents upon final completion of the project.

Note: HEB is not responsible for directing contractor's work or for the contractor's safety precautions or programs in connection with the work. Means and methods are the sole responsibility of the contractor.

Deliverables will be: Submittal reviews; RFI responses; field reports, payment application recommendations, certificate of substantial completion, punch list, closeout documents.

Number of meetings attended will be: One (1) pre-construction meeting; progress meetings.

Number of site visits will be: Two to five (2 – 5) site visits per week during construction, one (1) substantial completion walkthrough with City Official(s), and one final walk-through with City Official(s).

Assumptions:

- It is understood that adjustments to the schedule, site visits, scope, and fee of this Agreement may become necessary as a result of future developments in the ongoing COVID-19 pandemic and that the parties' remedies, as outlined in Delays and Public Responsibilities sections of the General Provisions, apply to the current pandemic.
- This agreement does not include review of change orders. Contract Amendments will be provided for each change order that arises.
- Survey services are not included in this Agreement. If surveying is found to be required, those services can be provided under a separate Contract Amendment.
- The construction administration phase is contingent on financing and award to Contractor.
- On-site construction is anticipated to occur over an 8-week period. If the construction schedule is extended, a Contract Amendment will be issued to add budget for the additional site visits and other tasks.

Schedule: The proposed schedule for the work is as follows:

Phase	Estimated Duration	Estimated Completion
<i>Contract Amendment Execution</i>		<i>June 14, 2021</i>
006 Bridge Joint Procurement	2 weeks	June 25, 2021
007 Construction Administration	8 weeks	November 2021

Fee: The schedule of fees for the work, including travel, is as follows:

Phase	Estimated Fees	Reimbursable Expenses
006 Bridge Joint Procurement	\$ 1,800 Lump Sum	
007 Construction Administration	\$45,000 Hourly	\$ 5,000

Project Management: Mr. Christopher R. Fournier, PE will be the principal-in-charge and project manager for this project. He will be responsible for all client liaison, attend all client meetings, direct the project team and be responsible for overall project quality. He will be assisted by structural and civil project engineers, surveyors, technicians, and administrators as needed for the successful completion of the work.

Thank you for the opportunity to present this proposal. We look forward to working with you on your project.

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