



**BRPC**  
Berkshire Regional Planning Commission

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**Agreement By and Between**

**Town of Monterey**

**and Berkshire Regional Planning Commission**

THIS AGREEMENT made as of the 12<sup>th</sup> day of January, 2023, is by and between the Town of Monterey, hereinafter called the TOWN, and the Berkshire Regional Planning Commission, hereinafter called the COMMISSION.

WHEREAS, the TOWN has entered into an Agreement with the Massachusetts Department of Environmental Protection to conduct Hupi Road Drainage Improvements to Reduce Sediment Inflow to Lake Garfield (the "Project").

WHEREAS, professional services relating to the implementation of the Project are sought to assist the TOWN in the timely achievement of the Project objectives.

NOW, THEREFORE THE PARTIES HERETO DO AGREE AS FOLLOWS:

1. **ENGAGEMENT OF COMMISSION:** The TOWN hereby engages the COMMISSION to perform the services set forth herein and the COMMISSION hereby accepts the engagement.
2. **SCOPE OF SERVICES:** The COMMISSION shall perform the necessary services as described in Attachment A. The COMMISSION shall perform its services in accordance with reasonable professional standards of skill, care, and diligence.
3. **RESPONSIBILITY OF THE TOWN:** The TOWN shall assume responsibility for assisting the COMMISSION insofar as possible for the purpose of efficiency and furnishing the COMMISSION with information needed to satisfactorily complete the services.
4. **REPORTING:** The COMMISSION will submit written reports to the TOWN on the status of professional services as specified in Attachment A, or at other times as required by an information request or reporting requirement by the Massachusetts Dept. of Environmental Protection.
5. **TIME OF PERFORMANCE:** The services of the COMMISSION are to commence on or about January 1, 2023, and shall be undertaken and completed in sequence as to assure their expeditious completion. All services required hereunder shall be completed no later than December 30, 2025.
6. **COMPENSATION:** The TOWN will pay the COMMISSION a total fee in amount not to exceed \$42,600, based on a mutually agreed upon invoice procedure.
7. **AVAILABILITY OF FUNDS:** The compensation provided by this agreement is subject to the continued availability of funds for the Project, and to the continued eligibility of the Commonwealth and the TOWN to receive such funds.
8. **WITHDRAWAL:** The TOWN or COMMISSION may withdraw from this agreement for cause upon 15 days written notice. In the event of any such withdrawal, all finished and unfinished material shall become the property of the TOWN and the COMMISSION will be compensated for services provided to the date of termination.
9. **AMENDMENTS:** This agreement may be amended as agreed to in writing by the signatories hereto.

10. **NON-DISCRIMINATION:** The COMMISSION shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap, or national origin.
11. **INDEMNIFICATION:** To the extent permitted by law, the TOWN shall indemnify and hold the COMMISSION harmless from all suits, actions, claims, demands, damages, losses, expenses and costs, including attorneys' fees, or liability of every kind and description that the COMMISSION may incur or suffer resulting from, in connection with, or arising out of the design, construction, operation or maintenance of the Project, and from any subsequent future damage resulting from acts of nature, negligence, vandalism or other causes.
12. **CONFLICT OF INTEREST:** The COMMISSION acknowledges that the TOWN is a municipality for purposes of Chapter 268A of the Massachusetts General Laws, and the COMMISSION agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the COMMISSION based on said statute.
13. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
14. **COPYRIGHT:** No material prepared in whole or in part under this agreement shall be subject to copyright in the United States of America or in any other country. All material produced under the terms of this agreement is public property and cannot be copyrighted by either the COMMISSION or the TOWN.
15. **SEVERABILITY:** If any provision of this Agreement is held invalid, the remainder of the agreement shall not be affected thereby, and all other parts of this agreement shall nevertheless be in full force and effect.
16. **ASSIGNMENT:** This Agreement may not be assigned by either party.

**IN WITNESS** thereof, the TOWN and the COMMISSION have executed this agreement as of the date above written.

By:   
 Signatory Name: Jonn Makuc  
 Signatory Title: Select Board Chair

Date: 1/18/23

**COMMISSION:**

By: \_\_\_\_\_  
**Thomas Matuszko**  
**Executive Director**

Date: \_\_\_\_\_

For BRPC Use Only Agreement Reviewed by Office Manager _____ Finance _____ Dpt# Name _____
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## **Attachment A: Scope of Services**

Berkshire Regional Planning Commission (BRPC) will support the Town of Monterey to complete all work outlined in the Scope of Services agreement between Monterey and Massachusetts Department of Environmental Protection (MADEP) for project 22-07/319 entitled "Hupi Road Drainage Improvements to Reduce Sediment Inflow to Lake Garfield."

This includes:

### Project and Grant Management

BRPC will assist the Town with grant administration including but not excluded to completion of quarterly reports, match tracking, invoices, and final report. BRPC will subcontract and manage engineering and permitting. BRPC will serve as project lead, coordinating regular partner meetings with progress updates and ensuring deliverable completion in accordance with the MADEP Scope of Services (found in 22-07/319 Attachment A).

### Public Education and Outreach

BRPC will coordinate outreach events, create materials in support of the Hupi Road project. This includes a BMP Stormwater Guide for Homeowners, events, and demonstration projects that support the Lake Garfield Watershed based plan.