

## **TENDER AND COMPLETION AGREEMENT**

**THIS TENDER AND COMPLETION AGREEMENT** (this “Agreement”) is made and entered into this 30 day of June, 2025, by and among The Town of Bristol (hereinafter, “The Town”), Western Surety Company (hereinafter, “Western Surety” or the “Surety”), and Vinagro Materials, LLC (hereinafter, “Vinagro”).

### **RECITALS**

**WHEREAS**, on or about March 12, 2024, New England Building and Bridge Co. (“NEBB”) entered into a construction contract (the “Original Contract”) with The Town for the performance of certain work with respect to the project known as Mount Hope Avenue Drainage Improvements, Bid No. 1032 in the Town of Bristol, Rhode Island (the “Project”) for the sum of \$1,070,829.50, with the scope of NEBB’s work being set forth in the Original Contract and the exhibits thereto;

**WHEREAS**, in connection with the Original Contract, Western Surety, as Surety, and NEBB, as Principal, executed a Payment Bond (the “Payment Bond”) and a Performance Bond (the “Performance Bond”), each bearing Bond No. 30213330 (collectively, the “Bonds”), in favor of The Town, as Obligee, in the penal sum of \$1,070,829.50, securing, under certain terms and conditions, NEBB’s completion of the Original Contract and its payment for labor and material provided in furtherance of the completion of the Contract; and

**WHEREAS**, by letter dated May 6, 2025, The Town terminated NEBB as the contractor for the project pursuant to Original Contract (the “Termination”) and demanded that Western Surety “satisfy its obligation under its performance bond to provide for the satisfactory completion of NEBB contractual obligations”; and

**WHEREAS**, the Surety has agreed to provide for completion of the Original Contract under the Performance Bond, and has tendered Vinagro as the completion contractor to The Town; and

**WHEREAS**, Vinagro is interested in and willing to complete the remaining work required by the Original Contract, as specified in the January 13, 2025 Punchlist from Beta, annexed hereto as

Exhibit A. Vinagro Materials has submitted a proposal to Western Surety for the completion of the Work, and agrees to undertake to perform all of the obligations and assume all responsibilities of NEBB under the Original Contract as set forth herein, and Vinagro has examined and is familiar with the terms of the Original Contract, including the drawings and specifications, change orders, all amendments and addenda thereto, and related contract documents, and the current status of the Project, and has expressed a desire to, and represents that it has the ability and resources to complete all of the work under and in accordance with the terms of the Original Contract and this Agreement; and

**WHEREAS**, Western Surety desires to tender Vinagro, as a completion contractor, to The Town, and The Town accepts Vinagro as the completion contractor;

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The recitals set forth above are incorporated herein.
2. The parties agree that, as of the date of this Agreement, the financial status of the

Original Contract is as follows:

(a) Original Contract Price	\$	1,070,829.50
(b) Approved to Date (Payment Application #7 – 12/31/24)	\$	910,398.05
(c) Earned Retainage	\$	45,519.90
(d) Amount Paid to Principal or Surety*	\$	864,878.15
(e) Balance to Bill	\$	160,431.45
(f) Total Available Contract Balance (including retainage)	\$	205,951.35
(g) Completion Contractor Price	\$	62,548.00
(h) Contract Surplus to be paid to Surety	\$	143,403.35

3. Upon final completion of the project as certified by the Town, The Town will pay the Surety \$143,403.35, subject to any further adjustments as may result from change orders to the Original Contract. Upon payment, the Town will fully discharge the Surety's obligations under the Performance Bond.

4. Vinagro Materials will be responsible for remediating all deficiencies in its' work performed to date. Vinagro, as an independent contractor and not as an agent of the Surety, shall fully perform and complete all obligations required to be performed and completed by NEBB under the Original Contract, including all change orders, amendments and addenda thereto and all other documents which have become part of the Original Contract (hereinafter sometimes referred to as the "Work"), which Original Contract is expressly incorporated herein by reference. Vinagro shall fully perform and complete all of the obligations and work under the Original Contract, and assume all responsibilities of NEBB to The Town under the Original Contract, including but not limited to:

(a) all items as outlined in the January 13, 2025 of Jared Linhares, of BETA Group, Inc in accordance with Jon No. 11021 Subject: "Mount Hope Avenue Drainage Improvements: Punchlist Memo" (Exhibit A).

(b) the parties agree that the time in which to complete Issue #1 Loam and Seed is from August 15 to October 1, 2025.

(c) preparing and submitting all written submittals, including, but not limited to, shop drawings, as-built drawings, and/or O&M manuals; and

(d) fulfilling any and all guarantee and/or warranty obligations specified in the Original Contract for work and materials furnished and/or performed by Vinagro. The Town shall be entitled to make an additional claim against the Surety for any guaranty and/or warranty issue that may arise in connection with NEBB's work and is not within Vinagro's guaranty and/or warranty obligations.

5. It is understood among the parties that Vinagro has received, reviewed, and is familiar with all of the Original Contract documents, and has reviewed and is familiar with the nature and status of the Work previously performed on the Project by NEBB and its subcontractors. Vinagro hereby accepts responsibility for the final completion of the Original Contract in accordance with Section 4 (a). Vinagro acknowledges that The Town has not made and makes no representations or warranties concerning the state of the project site or the work performed under

the Original Contract prior to the execution of this Agreement and Vinagro accepts the project site and work performed in an "as is" condition. Vinagro further acknowledges that neither the Surety nor its consultants, Beacon Consulting Group, Inc. ("Beacon"), have made, and do not make, any representations or warranties concerning the work performed under the Original Contract prior to the execution of this Agreement.

6. Vinagro agrees to complete the Work for the amount of \$62,548.00, Paragraph 2(g), as set forth in its proposal dated April 10, 2025 which is annexed hereto as Exhibit B (the "Proposal"). The Proposal is hereby incorporated by reference into this Agreement. To the extent of a conflict between the terms of the Proposal and this Agreement, the terms of this Agreement shall govern.

7. Vinagro agrees to perform and satisfactorily complete items of work set forth in all outstanding change orders to the Original Contract pending at the time of execution of this Agreement.

8. In addition, and as a material term hereof, Vinagro acknowledges and agrees that Western Surety is not responsible and Vinagro shall not look to Western Surety for payment of any work performed by Vinagro for The Town under the terms of this Agreement or otherwise.

- a. Within three (3) business days of executing this Agreement, and before commencing any work on the Project, Vinagro shall deliver to The Town a performance bond and a payment bond (the "Replacement Bonds"), in the form required by the Contract Documents, each in the penal sum of \$62,548.00, prior to its commencement of work, issued by such surety ("Replacement Surety") as may be qualified to issue such surety bonds in the State of Rhode Island and reasonably acceptable to The Town, naming Vinagro as principal and The Town as obligee, securing Vinagro's performance of the Original Contract and change orders, respectively, and the payment of proper claims of laborers, subcontractors, and material suppliers. Western Surety shall be named as a dual obligee on the Replacement Bonds.

Additionally, within three (3) business days of executing this Agreement and prior to commencing work on the Project, Vinagro shall obtain all insurance required and specified by the Original Contract and shall provide proof of such insurance coverage to The Town. In addition to the parties specified under the Original Contract, Western Surety shall be named as an additional insured under all such required insurance policies.

- b. The original Performance Bond furnished by Western and having NEBB ("NEBB Bond") as Principal shall be released, subject to the following: NEBB Bond shall be considered to be an excess bond, if the surety on the Replacement Bond referred to in Paragraph 8 pays said bond's full penal sum and said sum is insufficient to satisfy valid claims of the Town.
9. The foregoing notwithstanding, the validity of this Agreement is expressly and wholly contingent upon Vinagro's timely execution of this Agreement and the attainment of acceptable bonding and insurance as set forth in Paragraph 11 of this Agreement. Execution of this Agreement and the provision of the Replacement Bonds and insurance shall occur no later than July 4, 2025. In the event Vinagro refuses or otherwise fails to so timely execute this Agreement, or fails to provide The Town with acceptable Replacement Bonds and insurance by July 4, 2025, all parties hereto acknowledge and agree that this Agreement may be terminated by Western Surety or The Town.
10. Vinagro agrees to promptly commence work upon receipt of the Notice to Proceed from The Town and to perform and complete the Original Contract referenced herein in accordance with its terms.
11. The Town shall arrange payment to Vinagro for the performance of any of the work or obligations undertaken by Vinagro in this Agreement including, but not limited to, the scope of work identified under the Original Contract, or change orders thereto. Upon

(1) execution of this Agreement and its receipt of the Replacement Bonds, and the Tendered Payment, and (2) upon satisfactory completion of the Original Contract by Vinagro and, (3) upon the Surety covering all costs associated therewith as referenced in paragraph (3), above, the Town shall fully discharge the Surety's obligations under the Performance Bond and The Town shall release and forever discharge Surety of and from any and all claims, rights, demands or causes of action which The Town has or may ever have, now or in the future which have been or could have asserted, known and/or unknown against Surety arising out of or in any way related to the Original Contract and/or the Performance Bond, with the exception of claims for latent defects in NEBB's work which are neither known nor reasonably discoverable by The Town, or demands for indemnity or contribution against claims asserted against The Town by third parties and arising out of NEBB's performance under the Original Contract. The Town represents and warrants that, as of the date of this Agreement, it is not aware of any such latent defects or claims asserted by third parties arising out of NEBB's performance under the Original Contract. If latent defects are discovered by either The Town or Vinagro in the work performed by NEBB, The Town and/or Vinagro shall immediately notify Western Surety of such latent defects and, if applicable, provide a cost estimate to repair such latent defects. Vinagro is not authorized to complete said work without the express written authorization of Western Surety. The Town hereby assigns, sells, and transfers to Surety all of The Town's right, title and interest in, and to all of its rights and causes of action against NEBB, arising out of or in any way related to the Original Contract. Nothing set forth in this Agreement is intended to prevent The Town from pleading or asserting any and all defenses in connection with any claim or lawsuit that may be asserted against The Town by NEBB arising out of the Original Contract and/or the Project.

12. Any liability on the part of the Surety under this Agreement and the Performance Bond shall be limited to the penal sum of the Performance Bond less any payments made by the Surety under this Agreement and/or the Performance Bond (the "Limitation of Liability") and nothing herein shall be construed to increase the Surety's liability above the Limitation of Liability. Additionally, one Limitation of Liability shall apply to both this Agreement and the Performance Bond and the Surety shall have no further liability under either this Agreement or the Performance Bond once the Limitation of Liability is reached.
13. Nothing contained in this Agreement shall waive, limit, alter or amend any of Western Surety's obligations, rights or defenses under the Payment Bond with respect to the claims of laborers, subcontractors, or material suppliers of NEBB for labor and/or materials supplied to the Project prior to May 6, 2025. To the extent of payments made by the Surety to third party claimants that may be due under the Payment Bond, the penal sum of the Payment Bond has been reduced and shall be reduced dollar for dollar. Nothing contained in this Agreement shall be deemed to increase the liability of the Surety beyond the limit of liability set forth under the Bonds. Western Surety's obligation under the Payment Bond shall not apply to or cover: (i) claims accruing subsequent to May 6, 2025, and/or (ii) Vinagro or any of its subcontractors and suppliers for any work performed and materials delivered in connection with the Project and/or under this Agreement.
14. Neither this Agreement, nor any document executed by Western Surety in order to effectuate the transition of the Original Contract to Vinagro, including, but not limited to any requisitions or change orders, shall be construed as releasing, impairing, or otherwise affecting NEBB's rights against The Town, in any respect. All such rights are expressly reserved. The Town likewise reserves all such rights against NEBB.

15. Vinagro shall be responsible for all claims made by any laborers, subcontractors, or material suppliers for labor and/or material supplied to Vinagro on the Project and Vinagro shall indemnify, defend and hold Surety and The Town harmless against any claims or liability with respect to any such claims.
16. The parties do not intend by any provision of this Agreement to create any third party beneficiaries or to confer any benefit or enforceable rights upon anyone other than the parties hereto. The parties acknowledge that nothing in this Agreement shall extend or increase the rights of any claimant under the Payment Bond.
17. This Agreement constitutes the whole of the understanding, discussions, and agreements by and among the parties hereto with respect to the subject matter hereof. The terms and provisions of this Agreement are contractual and not mere recitals. The parties hereto acknowledge that there have been no oral, written or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Agreement. Any written or oral discussions conducted prior to the effective date of this Agreement shall not in any way vary or alter the terms of this Agreement.
18. Any notice hereunder shall be sent by electronic mail and shall be deemed delivered on the date it was transmitted. Any notices which are required to be given by the terms of this Agreement or the Bonds shall be made as follows:

As to The Town:

Peter F. Skwirz  
Williams Street  
Providence, RI 02903  
peteskwirz@utrlaw.com

As to Vinagro:

Kevin P. Braga, Esq.  
General Counsel  
2208 Plainfield Pike  
Johnston, RI 02919  
kbraga@jrvinagrocorp.com



As to the Surety:

Gregg Blocher  
Surety Claims  
151 N. Franklin Street, Chicago IL 60606  
gregg.blocher@cnasurety.com

With a copy to:

Dennis O'Neill  
Beacon Consulting Group, Inc  
255 W. 36<sup>th</sup> Street, Suite 202  
New York, New York 10018  
doneill@beacon.ws

19. This Agreement shall not be changed, amended or altered in any way except in writing and executed by the parties affected by such change, amendment or alteration.

20. This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island and shall bind the heirs, legal representatives, attorneys, shareholders, former shareholders, officers, directors, principals, employees, agents, divisions, parent companies, subsidiaries or affiliated corporations, predecessors, successors, insurers, and assigns of the parties hereto. Vinagro shall not be permitted to assign this Agreement or any of its rights hereunder without the express prior written consent of The Town. Any suit arising under this Agreement shall be commenced in a court of competent jurisdiction located in the State of Rhode Island.

21. The making of this Agreement is not intended by the parties hereto, and therefore shall not be construed, to release, relinquish, discharge, waive, limit, alter, amend, serve as an estoppel, or otherwise impair the rights, claims and defenses of the Surety against persons or entities who are not parties to this Agreement, and all such rights, claims and defenses are hereby expressly reserved to the Surety.

22. In connection with this Agreement and the transactions contemplated herein, the parties also agree to cooperate with one another and to execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate

to effectuate and perform the parties' obligations under this Agreement and the transactions contemplated herein.

23. This Agreement does not constitute an admission of fault or liability on the part of any party.

24. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which shall constitute one and the same Agreement. This Agreement shall be effective when executed by all parties. The facsimile or electronic copy of a party's signature shall be deemed conclusive evidence that such party has executed this Agreement when such facsimile or electronic copy is transmitted to counsel for other parties by such party or such party's attorney, together with the written representation of such party or such party's attorney that the facsimile or electronic copy of such party's signature is a true copy thereof and that signature pages bearing the original signature of such party are being sent to the other parties and/or their counsel. Each person signing this Agreement represents and warrants that he is duly authorized to do so on behalf of the party on behalf of which he or she has executed this Agreement.

25. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then such invalidity shall not affect the other provisions of this Agreement or the applications thereof which can be given effect without the invalid provision or application. If any such determination of invalidity or unenforceability is rendered, the parties agree that the remaining provisions of this Agreement are and shall be severable. In the event that, subsequent to the date hereof, this Agreement shall be rendered unenforceable as a result of the enactment, modification or repeal of any applicable federal or state statute, rule or regulation or as a result of the decision of any court of competent jurisdiction, each party shall forthwith make any payments owed to the other, which shall be due pursuant to this Agreement, through and including the date upon which this Agreement shall thereby become unenforceable.

26. The parties agree and acknowledge that this is a negotiated agreement and that the rule of construction that any ambiguities are to be construed against the drafting party, shall not apply.

27. The signatories of this Agreement represent, covenant and warrant to each other that: (a) they are authorized to execute this Agreement on behalf of their respective principal; (b) they have carefully read this Agreement; (c) had the opportunity to confer with legal counsel concerning its terms; (d) this Agreement is a negotiated document and (e) that they understand the provisions of this Agreement and intend to be bound thereby.

28. Notwithstanding any other provision to the contrary, the parties expressly acknowledge and agree that this Agreement, and the release contained herein, do not in any way affect, inhibit, or limit the Surety's rights against NEBB and the Surety's other indemnitors (collectively, the "Indemnitors"), with respect to the General Indemnity Agreement which was executed by the Indemnitors in connection with the Bonds (the "GIA") or with respect to the Bonds or with respect to the Surety's rights against the Indemnitors under the law or otherwise, all of which rights are expressly reserved by the Surety.

**IN WITNESS WHEREOF**, this Agreement has been duly executed as of the day and year first above written.

Vinagro Materials, LLC

By: \_\_\_\_\_

Western Surety Company

By: \_\_\_\_\_

The Town of Bristol

By: \_\_\_\_\_