

BOARD OF SELECTMEN SPECIAL MEETING
Thursday, March 9, 2023, 4:00 pm
Via Webex & In-Person in the
First Floor Conference Room, Independence Hall
725 Old Post Road, Fairfield, CT 06824

A recording of this meeting can be found here: [BOS Special Meeting 3.9.23.](#)

DRAFT MINUTES

MEMBERS PRESENT: First Selectwoman Brenda L Kupchick, Selectman Thomas M. Flynn, Selectwoman Nancy E. Lefkowitz

OTHERS PRESENT: Schools Superintendent Mike Testani, Executive Director of Operations for Fairfield Public Schools (FPS) Angelus Papageorge, Director of Construction and Energy Management for FPS Sal Morabito, Engineering Manager Bill Hurley, Purchasing Director Adam Tulin, Community and Economic Development Director Mark Barnhart, Police Chief Robert Kalamaras, Bird Rides Fleet Manager Nick Morabile, Parks and Recreation Director Anthony Calabrese, CFO Jared Schmitt

1) **CALL TO ORDER**

First Selectwoman Kupchick called the meeting to order at 4:00 pm.

2) **PLEDGE OF ALLEGIANCE**

Selectwoman Kupchick led the Pledge of Allegiance.

3) **PURCHASING AUTHORITY**

To hear, consider and authorize the Purchasing Authority to enter into the proposed contract with Silktown Roofing, Inc. to provide all labor, equipment and all else necessary to replace the roof at the Riverfield Elementary School as detailed in Bid #2023-90 for a total amount not to exceed \$1,208,000.00 with additional authority to execute change orders to said contract in an amount not to exceed \$120,800.00, for a combined grand total not to exceed \$1,328,800.00. Funding for this contract is available in Account #26108010-57005-RIVER.

Selectman Flynn made a motion to approve Item 3. Selectwoman Lefkowitz seconded the motion.

Fairfield Schools Director of Construction and Energy Management Sal Morabito said Riverfield Elementary School had a roof restoration 10 years ago and it is at the end of its life span. He said repairs have been done, but now the roof needs to be replaced. He said Silktown won the contract and it does excellent work and stays on schedule. Mr. Morabito said Silktown was also the low bid for the Sherman Elementary School roof replacement which is to be approved next in this meeting. He said this is the last step to getting the projects started. Mr. Morabito said the Town Attorney has approved the contracts. He said the Special Projects Standing Building Committee has approved Silktown for both projects and the architects, Silver Petrucelli, are preparing the ADA contract.

The motion carried unanimously.

4) **PURCHASING AUTHORITY**

To hear, consider and authorize the Purchasing Authority to enter into the proposed contract with Silktown Roofing, Inc. to provide all labor, equipment and all else necessary to replace the roof at the Roger Sherman Elementary School as detailed in Bid #2023-114 for a total amount not to exceed \$1,719,000.00 with additional authority to execute change orders to said contract in an amount not to exceed \$171,900.00, for a combined grand total not to exceed \$1,890,900.00. Funding for this contract is available in Account #26108010-57005-SHERM.

Selectman Flynn made a motion to approve Item 4. Selectwoman Lefkowitz seconded the motion which carried unanimously.

5) **PURCHASING AUTHORITY**

To hear, consider and authorize the Purchasing Authority to enter into the proposed contract with Star Construction Corporation provide all labor, materials, equipment, and all else necessary to perform ADA Ramp and Sidewalk Reconfigurations as detailed in Bid #2023-50 in an amount not to exceed \$387,048.00 with additional authority to execute change orders to said contract in an amount not to exceed \$38,705.00 for a combined grand total amount not to exceed \$425,753.00.

Selectman Flynn made a motion to approve Item 5. Selectwoman Lefkowitz seconded the motion.

Engineering Manager Bill Hurley said the bids came in higher than budgeted, but the Town was able to get a STEAP (Small Town Economic Assistance Program) grant for \$126,000. He said other funding is coming from CDGB (Community Development Grant Block), DPW and the Town Downtown Fund. Mr. Hurley said pre-COVID estimates were \$150,000 - \$200,000, but when put out to bid, the Town received five bids that were considerably higher. There was a discussion about the increase in cost.

The motion carried 2-1-0 (Flynn opposed).

6) **COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR**

To hear, consider and reauthorize the pilot operating agreement between the Town of Fairfield and Bird Rides, Inc. to operate a stand-up electric scooter sharing system within the Town of Fairfield at no cost to the Town of Fairfield for additional one year starting April 21, 2023.

Selectman Flynn made a motion to approve Item 6. Selectwoman Lefkowitz seconded the motion.

Community and Economic Development Director Mark Barnhart talked about the Bird Rides pilot program that was introduced last summer to Fairfield residents. He said the program ran from May 22, 2022 through December 22, 2022. He said there were 19,000 rides, 4300 riders and 31,000 miles during that period. Mr. Barnhart said there was generally positive feedback in Town, but there were also complaints.

He said Bird Ride was able to minimize the speed of the scooters and secure the ages of the riders. He said that this year, the company is hoping to have facial recognition for registered riders.

First Selectman Kupchick said when she had received email complaints and she contacted Bird Rides Fleet Manager Nick Morabile and he was responsive. Police Chief Kalamaras said there were a few minor accidents, but the Police were able to track down someone who left the scene by the technology from the process of the registration to use the scooter. Selectman Flynn said he was concerned about safety, but Chief Kalamaras said the scooters are no less safe than bikes or cars and many people in Town own and operate their own scooters. There was a discussion with Mr. Morabile regarding the new facial recognition and how these scooters are a benefit to the Town especially with the Fairfield University students.

The motion carried unanimously.

7) PURCHASING AUTHORITY

To hear, consider and authorize the Purchasing Authority to enter into the proposed contract with Hinding Tennis, LLC to install new Pickleball courts at the Tunxis Hill Park as detailed in Bid #2023-55 for a total fee not to exceed \$187,765.00. Account #22809010-57000-024T9 – Tunxis Hill Pickleball Courts.

Selectman Flynn made a motion to approve Item 7. Selectwoman Lefkowitz seconded the motion.

Parks & Recreation Director Anthony Calabrese said this project is Phase one of a larger project. He said this will replace the four courts that are currently not in full use.

The motion carried unanimously.

8) PURCHASING AUTHORITY

To hear, consider and authorize the Purchasing Authority to enter into the proposed contract with Classic Turf Company, LLC to install new tennis courts at the Timothy Dwight Elementary School as detailed in Bid #2023-55 for a total fee not to exceed \$553,950.00. Account #22809010-57000-023T8 – Post Tension Tennis Dwight *and* Account #010-7080-53200 – Parks – Fees and Professional Services.

Selectman Flynn made a motion to approve Item 8. Selectwoman Lefkowitz seconded the motion.

Mr. Calabrese and Purchasing Director Adam Tulin said this went through the normal bid process and came in slightly higher than budgeted. They said \$3,950 will be taken from Fees and Professional Services in the Parks budget.

The motion carried unanimously.

9) PURCHASING AUTHORITY

To hear, consider and authorize the Purchasing Authority to enter into the proposed contract with Classic Turf Company, LLC to install new tennis courts at the Fairfield Woods Middle School as detailed in Bid #2023-55 for a total fee not to exceed \$522,000. Account #22809010-57000-024T8 – Post-Tension Tennis Courts – Fairfield Woods.

Selectman Flynn made a motion to approve Item 9. Selectwoman Lefkowitz seconded the motion.

Mr. Calabrese said Classic Turf was awarded this as well. He said this is exactly on budget and there is a 20-year guarantee on the life of the court with the post tension construction.

The motion carried unanimously.

10) PURCHASING AUTHORITY

To hear, consider and authorize the Purchasing Authority to enter into the proposed lease with Fairfield Indoor Tennis, Inc. to provide all labor, materials, equipment and all else necessary for the operation of a summer tennis program at the South Pine Creek Park, 210 Old Damn Road, Fairfield, CT. This is a one year lease with two (2) optional one (1) year extensions for a total term not to exceed three (3) summer lease periods; \$33,480.00 for the 2023 summer lease period, with subsequent summer lease periods under the agreement to be adjusted annually based on the US Bureau of Labor Statistics Consumer Price Index.

Selectman Flynn made a motion to approve Item 10. Selectwoman Lefkowitz seconded the motion.

Mr. Calabrese said there is a 20-year lease in place for September – May and Fairfield Indoor Tennis used to clear it out in May. He said the Town hired seasonal staff for tennis in the summer. He said there was less income when staff ran the summer program.

The motion carried unanimously.

11) CHIEF FISCAL OFFICER (*requires RTM approval*)

To hear, consider and act upon amendments to the following cell tower lease:
DISH WIRELESS L.L.C. – 100 Reef Road - Cell Tower Lease

Selectman Flynn made a motion to approve Item 11. First Selectwoman Kupchick seconded the motion.

CFO Jared Schmitt said DISH moved to a tower on Commerce Drive and now would like to move to the cell tower on Reef Road. He said DISH will pay for upgrades and repairs.

The motion carried unanimously.

12) TAX COLLECTOR

To consider and act upon tax refunds as recommended by the Tax Collector in the amount of \$48,534.72

Selectman Flynn made a motion to approve Item 12. First Selectwoman Kupchick seconded the motion which carried unanimously.

13) Adjourn

Selectman Flynn made a motion to adjourn the meeting. First Selectwoman Kupchick seconded the motion which carried unanimously. The meeting adjourned at 5:00 pm.

Respectfully submitted,

Pru O'Brien
Recording Secretary

BOARD OF SELECTMEN REGULAR MEETING
Monday, April 3, 2023, 4:00 pm
Via Webex & In-Person in the
First Floor Conference Room, Independence Hall
725 Old Post Road, Fairfield, CT 06824

A recording of this meeting can be found here: [BOS Regular Meeting 4.3.2023.](#)

DRAFT MINUTES

MEMBERS PRESENT: First Selectwoman Brenda L Kupchick, Selectman Thomas M. Flynn, Selectwoman Nancy E. Lefkowitz

OTHERS PRESENT: Engineering Manager Bill Hurley, Purchasing Director Adam Tulin, Community and Economic Development Director Mark Barnhart, Parks & Recreation Director Anthony Calabrese

1) **CALL TO ORDER**

First Selectwoman Kupchick called the meeting to order at 4:00 pm.

2) **PLEDGE OF ALLEGIANCE**

First Selectwoman Kupchick led the Pledge of Allegiance.

3) **PURCHASING AUTHORITY**

To hear, consider and authorize the Purchasing Authority to enter into the proposed contract with Burns Construction Company to provide all labor, materials, equipment, and all else necessary to perform the Sanitary Sewer Line Extension at Carriage Drive as detailed in Bid #2023-124 in an amount not to exceed \$209,106.00 with additional authority to execute change orders to said contract in an amount not to exceed \$20,910.00 for a combined grand total amount not to exceed \$230,016.00. Per the "Sewer Installment Agreement", fifty percent (50%) of the installation cost will be paid by the Water Pollution Control Authority, and fifty percent (50%) will be paid by each homeowner who is a party to the project. Homeowners will also be responsible for related hook-up charges.

Selectman Flynn made a motion to approve Item 3. Selectwoman Lefkowitz seconded the motion.

Engineering Manager Bill Hurley said there is support for this project from the neighborhood and they want the project to start. He said the cost is within the original estimated expense. He said half of the cost is being paid for by the WPCA and the other half is being paid by the residents. Mr. Hurley said contingency is included in the cost estimate, so if it is not used, the expenses will go down. He referred to the five signed agreements by the residents in the backup documents for this meeting. Purchasing Director Adam Tulin said this project went through the usual bid process and the Town Attorney has reviewed the agreement with no objections.

The motion carried unanimously.

4) **PURCHASING AUTHORITY**

To hear, consider and authorize the Purchasing Authority to enter into the proposed contract with Abbey Tent & Party Rentals to provide all labor, materials, equipment, and all else necessary to perform the Event Tent Install and Removal at Burr Homestead, as detailed in Bid #2023-123 in an amount not to exceed \$45,665.00 for the 2023 rental season.

Selectman Flynn made a motion to approve Item 4. Selectwoman Lefkowitz seconded the motion.

Anthony Calabrese said this is for the tent that is put up behind Burr Mansion to support events booked at the venue. He said right now, there is an estimated \$51,000 in revenue and the tent cost is \$46,000. He said there are still 6 dates available, and it is possible they will break even. He said the RTM proposed noise ordinance is not going forward at this time as they are re-evaluating it. There was a discussion on what is needed to make the neighbors happy and still make money as well as other uses for the Homestead.

The motion carried unanimously.

Selectwoman Lefkowitz made a motion to waive the reading of Item 5. Selectman Flynn seconded the motion which carried unanimously.

5) **COMMUNITY AND ECONOMIC DEVELOPMENT DIRECTOR**

WHEREAS, the State of Connecticut Department of Economic & Community Development is inviting applications under its Municipal Brownfield Grant Program to assist with remediating and redeveloping brownfield sites; and

WHEREAS, the property at 81 Black Rock Turnpike, which was once part of the Bullard Machine Tooling Company, has been identified as a brownfield site, in which the presence or potential presence of pollution from the former industrial use has inhibited redevelopment of this 4.9 acre site adjacent to the Fairfield Metro Center Train Station; and

WHEREAS, Post Road Realty, LLC has entered into an agreement to purchase 81 Black Rock Turnpike in order to redevelop the property into a mixed use, transit oriented development, which upon completion, will contribute significantly to the economic vitality of the Town of Fairfield and the State of Connecticut; and

WHEREAS, the Municipal Brownfield Grant Program encourages public-private partnerships to better leverage limited public funds to help clean-up and re-activate these abandoned and underutilized brownfield sites; and

WHEREAS, the Town of Fairfield and Post Road Realty, LLC are desirous of partnering for purposes of submitting a grant application under the Municipal Brownfield Grant Program to assist with remediating this site to facilitate future redevelopment; and

NOW, THEREFORE, BE IT RESOLVED, that the Fairfield Board of Selectmen expresses its support for these joint efforts and hereby authorizes the submission of an application under the Municipal Brownfield Grant Program to the State Department of Community & Economic Development for said purpose.

Selectman Flynn made a motion to approve Item 5. Selectwoman Lefkowitz seconded the motion.

Mark Barnhart asked for approval to apply for a Brownfield Grant for the property at 81 Black Rock Turnpike, next to the Metro Center Train Station. He said it is the former site of the Bullard Tool Company and needs to be remediated. He said the Town could apply for up to \$4,000,000 which would allow the Town to work with a private company in contract to purchase and clean up the property. Mr. Barnhart said the Town will not enter into any contract with the new owner, nor will the Town incur cost. Selectman Flynn mentioned that the grant funds can assist to get the property cleaned and developed to be a revenue resource for Fairfield. Mr. Barnhart said if the grant is awarded, he will need to come back to the Board of Selectmen for approval of funds.

The motion carried unanimously.

6) TAX COLLECTOR

To consider and act upon tax refunds as recommended by the Tax Collector in the amount of \$8,448.95

Selectman Flynn made a motion to approve Item 6. Selectwoman Lefkowitz seconded the motion which carried unanimously.

7) To hear, consider and act upon any other business which shall properly come before this meeting

First Selectwoman Kupchick stated the following:

- After the RTM voted in concurrence with the Board of Selectman and Board of Finance to support the proposal to repair Penfield Pavilion and remediate the contaminated soil under the building, I sent a letter to FEMA requesting reconsideration of the insurance retrograde. Last Thursday, the Town received confirmation in writing one day before the deadline of March 31, 2023 that FEMA made the decision to suspend the CRS retrograde and other potential enforcement actions. FEMA noted in its letter that our “community has been able to demonstrate evidence of progress towards compliance at Penfield Pavilion.

I want to publicly thank Congressman Himes and his staff for taking quick action and assisting my administration in facilitating discussions with FEMA, as well as the entire federal delegation for co-signing a letter of re-consideration on our behalf.

Spending town resources on this project is certainly not something to celebrate, but I am grateful we won't be losing this Town asset enjoyed by so many in our community. The good news is this project will be paid for with surplus funds that have been responsibly been put away over the last two years.

- On March 22nd, I held a meeting with residents regarding the Water Pollution Control Facility, the broken digester and the resulting odor complaints. I know this situation has been very frustrating for our residents who live in and around the area of the facility. The goal was to provide an opportunity for neighbors to ask questions about the operations and learn more about the timeline about the ongoing project to fix the digester. I also provided a full update of notes from that meeting in the newsletter for other residents who couldn't attend the meeting. It can be found on the town website in the 3/31 Town update.

- I was very excited to welcome the CT Department of Veterans Affairs Commissioner to the Bigelow Center. The Town has been in negotiations with them. This is a good partnership to finally have this office here. A lot of area Veterans joined us that day. This will be a huge asset to the Town and to Veterans because they do a great job connecting Veterans and their families to services and programs tailored specifically for them. I want to recognize Veterans Service Officer Ramon Agosto and our Human and Social Services Director Julie DeMarco for their efforts on behalf of this partnership. She said this new office is a source of pride.
- The RTM will be taking up the Board of Education budget tomorrow night. Please visit www.fairfieldct.org/budget to follow along the process.
- Happy Holidays to those celebrating Passover, Easter and Ramadan.

Selectwoman Lefkowitz stated for the record that she encourages the formation of a Committee for oversight for Penfield that would benefit everyone.

8) Adjourn

Selectwoman Lefkowitz made a motion to adjourn. Selectman Flynn seconded the motion which carried unanimously.

The meeting adjourned at 4:44 pm.

Respectfully submitted,

Pru O'Brien
Recording Secretary

BOARD OF SELECTMEN/WPCA SPECIAL JOINT MEETING

Monday, April 10, 2023

4:00 pm

Via Webex Only

DRAFT MINUTES

BOS MEMBERS PRESENT: First Selectwoman Brenda L. Kupchick, Selectman Thomas Flynn, Selectwoman Nancy Lefkowitz (also a WPCA Member)

WPCA MEMBERS PRESENT: Chair Mark Elletson, Vice-Chair Joseph D'Avanzo, Ronald Drew, Matthew Manchisi, Chris Steiner

OTHERS PRESENT: Human Resource Director Cathleen Simpson, Labor Relations Specialist Joanne Courtemanche, Chief of Staff Jackie Bertolone, Town Attorney James Baldwin

- 1) CALL TO ORDER
First Selectwoman Brenda Kupchick called the meeting to order at 4:07 pm.
- 2) PLEDGE OF ALLEGIANCE
First Selectwoman Kupchick led the Pledge of Allegiance.
- 3) TOWN ATTORNEY
Executive Session – Personnel Matters – with Town Attorney Jim Baldwin and HR Director Cathleen Simpson

Selectman Tom Flynn made a motion to move into Executive Session at 4:10 pm. First Selectwoman Brenda Kupchick seconded the motion which carried unanimously.

Selectman Tom Flynn made a motion to move out of Executive Session at 4:48 pm. First Selectwoman Brenda Kupchick seconded the motion which carried unanimously.

No votes were taken during Executive Session.

- 4) Adjourn
Selectman Flynn made a motion to adjourn. Selectwoman Lefkowitz seconded the motion. The meeting adjourned at 4:50 pm.

Respectfully submitted,

Pru O'Brien
Recording Secretary

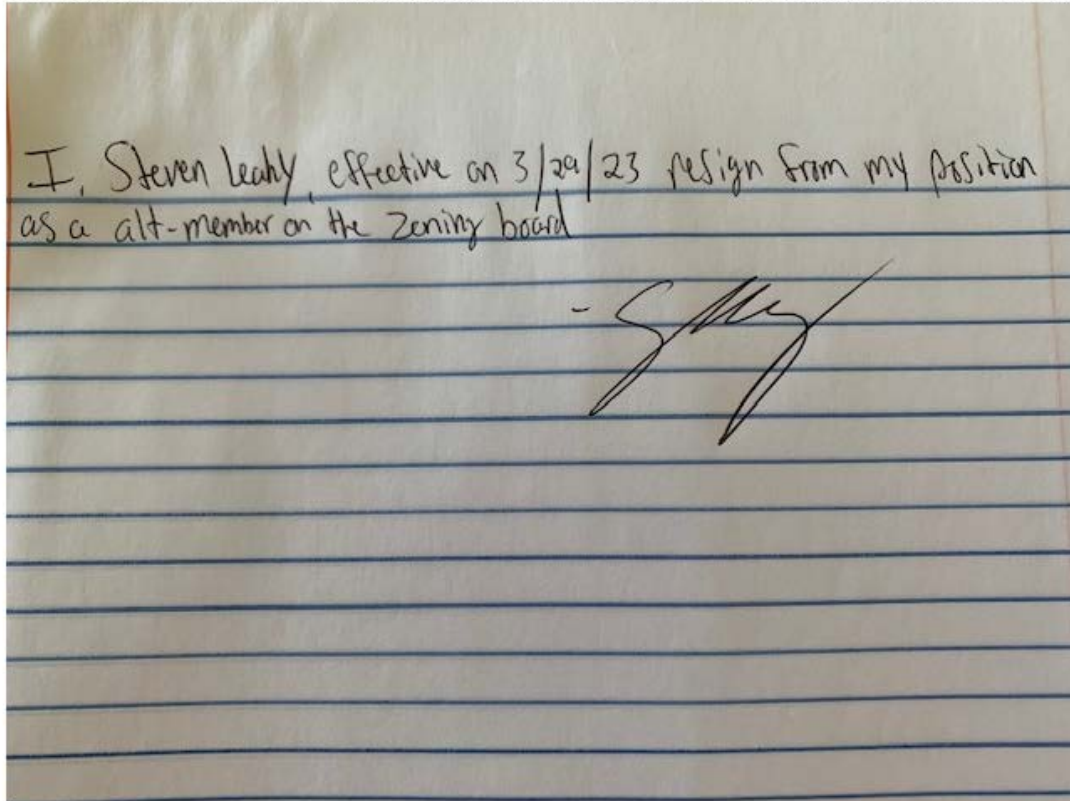
From: Steven Leahy <sdleahy@hotmail.com>

Sent: Monday, April 3, 2023 1:53 PM

To: Browne, Betsy <BBrowne@fairfieldct.org>

Subject: resignation

Hi Betsy, just following up from the email with Jim on friday. Here's the short letter. let me know if you need anything else from me.



I, Steven Leahy, effective on 3/29/23 resign from my position as a alt-member on the Zoning board

- *SL*

From: null@town.fairfield.ct.us
To: [Board of Selectmen](#)
Subject: New submission for form: Boards and Commissions Interest Form (ID #302)
Date: Thursday, April 6, 2023 8:34:38 PM

Boards and Commissions Interest Form

Record #302 submitted from IP address 69.119.161.107 on 4/6/2023 8:35 PM

[View form](#)

ID	302
First Name	Peter
Last Name	Collins
Street Address	29 Newton Street
Zip Code	06824
Email Address	seagrapecafe@gmail.com
Cell Phone	914-668-6565
Home Phone	
Work Phone	914-668-6565
Voter Registration Status	Yes
Political Party Affiliation	Republican Party
Board or Commission	Town Plan and Zoning Commission
Read the Boards Role	Yes
How You Learned About the Position	Colleague
Who You Have	Other Person(s)

Spoken To	
Explanation of Interest and Contribution	I have deep ties to Fairfield, from growing up in CT and as a Fairfield U student. My business and my family life are in Fairfield and I am interested in the preservation and growth of our beloved town. In NYC and Palm Beach, I served on boards that worked with elected officials and community boards related to landmark preservation and commercial growth. I will make a contribution through collaboration and common sense decision making, always keeping the continued vitality and the best interest of Fairfield residents and businesses in mind.
Resume or Bio	Collins Resume 2023.docx
Additional Comments	

[Manage](#)

PETER S. COLLINS
29 Newton Street
Fairfield CT 06824
914-668-6565
seagrapecafe@gmail.com

PROFESSIONAL SUMMARY

Seasoned nightlife and restaurant owner operator with 40 years of successful business launches and longevity. Skilled in leadership, business development, implementation, social media promotion, front-house and back-house operations, financials, team building, innovation, customer relations, and community relations.

VOLUNTEER, ADVISORY AND BOARD SUMMARY

Fifteen years experience serving various posts as board president, director and member for 261 unit residential coop, 267 unit hotel and condominium, residential boards and associations in New York City, Palm Beach FL and Fairfield CT. Volunteer hockey and wrestling coach

PROFESSIONAL EXPERIENCE

Owner Operator

Seagrape Café, Fairfield CT 2011- present

Iconic college and neighborhood bar/restaurant dating back to the 1960's. Claim to fame: Fairfield University's favorite bar and love connections that last.

Owner Operator

104 College Place, Fairfield CT 2013- present

Residential rental property for Fairfield University students. Claim to fame: Named the Exit by graduating students and renters get VIP treatment at Seagrape.

Owner Operator

Gaslight Lounge and Gaslight Pizzeria, Meatpacking District NYC 1995-2017

Forerunner to the development and popularity of the Meatpacking District as nightlife destination. Claim to fame: Almost every New Yorker and a lot of celebrities had a Gaslight story during its run. Home to beloved firemen and policemen during 911 clean up.

Owner Operator

Auction House, UES NYC 1992-1997 (still open)

First lounged themed bar on the Upper East Side with sofa seating. Claim to fame: Mark Messier Auction House friend and Investor, brought the Stanley Cup to Auction House in 1994 and made it home to NHL players. The Auction House, Stanley Cup hat is on permanent display at MSG.

Owner

Streetcar Café, Restaurant Row NYC 1997-2000

Small and narrow bar known for being a popular meeting spot. Claim to fame: Not so secret, secret favorite for Broadway actors and directors.

Minority Owner, Bar Manager**Liberty Café, South Street Seaport Pier 17 NYC 1985-1987**

First tenant to occupy Pier 17, followed by Flutie's and the redevelopment of the Seaport.

Claim to fame: Got its name because you could see Lady Liberty from its East River location

Bartender, Bar Manager

- Studio 54, Midtown NYC 1979-1983
- The Saloon, Lincoln Center NYC 1984-1992

Fashion Model 1980-1988

Modeled Internationally for Zoli, Ford and Elite Chicago, shot for Armani, Perry Ellis, Brooks Brothers, Hartmarx, Emery Air and various catalogs.

BOARDS AND ASSOCIATIONS**Board Member****Fairfield Beach Resident's Association (FBRA), Fairfield CT 2019 - present**

Student and Neighborhood Relations committee. Membership recruitment and event planning.

Board President**61 Jane Street Tenants Association, West Village NYC 2007-2015**

Kept the building structurally and financially solvent, worked closely with board members and the management company, created new revenue streams, managed 32BJ staff, installed security and camera systems, managed costly and contentious renovations, updated building policy and built much needed communication and camaraderie between owners and rent stabilized tenants.

Member**Meat Packing District Improvement Association (MPIA), Meatpacking NYC 2010-2015**

Community liaison with the 6th and 10th precincts of Manhattan, worked with Community Board Two and elected officials to manage landmark preservation and community trust during rapid commercial expansion of the Meat Packing District.

Member**Jane Street Block Association, Abington Square Trust, West Village NYC 2004-2015**

Collaborated with members on preservation of Jane Street gardens, cobblestones and Abington Park, promoted neighborhood involvement and fundraising.

Director**Palm Beach Hotel and Condominium, Palm Beach FL 2012-2015**

Worked on correcting structural problems and lobby renovation, got landmark designation for the hotel, worked with town to get the building to code and worked on committee to make sure large, adjacent, development of Publix preserved the architecture of Palm Beach.

VOLUNTEER COACH

Fairfield Preparatory College Wrestling 2019-2020, Fairfield CT

River Rats and Cyclones Hockey 2011-2015, Chelsea Piers NYC

Plan Analytics

Past performance is no guarantee or indication of future results. Please review the Important Disclosures at the end of the report for important information.

Allocation Summary

as of 03/31/2023

Filters Applied

Analysis Period: Year to date

Asset Class: **NOT**(Outstanding Loans)

Plan: TOWN OF FAIRFIELD CT

Selected participants: 417 out of 621



Name	Percent	Balance
T Rowe Spec Mod Grwth - 302618	15.35%	\$6,714,071.35
T Rowe Spec Mod Alloc - 302618	11.96%	\$5,231,508.26
Vngrd 500 Index Admiral - 302618	11.93%	\$5,218,023.61
MissionSquare PLUS R10 - 302618	8.27%	\$3,617,984.85
T Rowe Blue Chip Growth - 302618	6.42%	\$2,809,752.63
T Rowe Price Gbl Stk I - 302618	4.34%	\$1,898,793.84
MFS Value R6 - 302618	4.12%	\$1,801,380.30
Carillon Eagle Mid Cap Gr - 302618	3.21%	\$1,402,461.00
Vngrd FTSE AllW ex-US Idx - 302618	2.66%	\$1,161,982.38
MFS Intl Diversif R6 - 302618	2.50%	\$1,091,956.52
Am Funds 2035 Trgt Ret R6 - 302618	2.41%	\$1,055,563.48
Am Funds 2025 Trgt Ret R6 - 302618	2.39%	\$1,044,544.10
Vngrd Small-Cap Index Adm - 302618	2.37%	\$1,038,043.84
Am Funds 2040 Trgt Ret R6 - 302618	2.34%	\$1,022,337.79
Am Funds 2020 Trgt Ret R6 - 302618	2.34%	\$1,021,213.69
Am Funds 2030 Trgt Ret R6 - 302618	2.27%	\$992,539.38
Fidelity Adv Total Bd Z - 302618	1.74%	\$760,289.64
T Rowe Spec Cons Alloc - 302618	1.62%	\$709,014.35
Am Funds 2045 Trgt Ret R6 - 302618	1.55%	\$677,409.04
Victory Syc Est Val Y - 302618	1.50%	\$654,426.91
TOTAL	100%	\$43,732,869.24

Past performance is no guarantee or indication of future results. Please review the Important Disclosures at the end of the report for important information.

Name	Percent	Balance
● Vngrd Intermd-Term Bd Idx - 302618	1.45%	\$635,598.48
● BlackRock High Yield Bd K - 302618	1.38%	\$603,129.20
● Am Funds 2050 Trgt Ret R6 - 302618	1.08%	\$473,734.27
● Vngrd Mid-Cap Idx Admiral - 302618	0.98%	\$427,466.29
● DFA Real Estate Sec I - 302618	0.80%	\$347,886.70
● Am Funds 2015 Trgt Ret R6 - 302618	0.73%	\$318,950.51
● PIMCO Inc Institutional - 302618	0.53%	\$231,174.05
● Am Funds 2060 Trgt Ret R6 - 302618	0.47%	\$204,751.94
● Vanguard Explorer Admiral - 302618	0.36%	\$155,777.50
● Undiscvrd Mgrs Behav Val - 302618	0.35%	\$151,698.96
● Am Funds 2055 Trgt Ret R6 - 302618	0.31%	\$135,191.12
● Am Funds 2010 Trgt Ret R6 - 302618	0.28%	\$124,213.26
TOTAL	100%	\$43,732,869.24

Plan Analytics

Past performance is no guarantee or indication of future results. Please review the Important Disclosures at the end of the report for important information.

Allocation Summary

as of 03/31/2023

Filters Applied

Analysis Period: Year to date

Asset Class: **NOT**(Outstanding Loans)

Plan: TOWN OF FAIRFIELD

Selected participants: 203 out of 621



Name	Percent	Balance
Am Funds 2030 Trgt Ret R6 - 106216	15.72%	\$1,014,702.56
Am Funds 2050 Trgt Ret R6 - 106216	11.23%	\$725,057.10
Am Funds 2025 Trgt Ret R6 - 106216	8.85%	\$571,541.97
Vngrd 500 Index Admiral - 106216	7.50%	\$484,266.85
Am Funds 2035 Trgt Ret R6 - 106216	7.36%	\$474,974.77
MissionSquare PLUS R10 - 106216	6.43%	\$414,828.85
Am Funds 2045 Trgt Ret R6 - 106216	5.93%	\$382,515.96
Vngrd FTSE AllW ex-US Idx - 106216	4.66%	\$300,675.70
Am Funds 2020 Trgt Ret R6 - 106216	4.53%	\$292,569.89
Am Funds 2055 Trgt Ret R6 - 106216	3.98%	\$256,901.90
Am Funds 2040 Trgt Ret R6 - 106216	3.69%	\$237,969.30
T Rowe Blue Chip Growth - 106216	2.75%	\$177,700.73
Vngrd Small-Cap Index Adm - 106216	2.70%	\$174,442.63
T Rowe Spec Mod Alloc - 106216	2.27%	\$146,537.10
Fidelity Adv Total Bd Z - 106216	1.70%	\$109,556.77
Am Funds 2015 Trgt Ret R6 - 106216	1.38%	\$88,776.26
Vngrd Mid-Cap Idx Admiral - 106216	1.34%	\$86,259.86
Vngrd Intermd-Term Bd Idx - 106216	1.31%	\$84,609.47
DFA Real Estate Sec I - 106216	0.94%	\$60,369.11
MFS Intl Diversif R6 - 106216	0.88%	\$56,727.40
TOTAL	100%	\$6,455,280.70

Past performance is no guarantee or indication of future results. Please review the Important Disclosures at the end of the report for important information.

Name	Percent	Balance
● Am Funds 2010 Trgt Ret R6 - 106216	0.87%	\$56,229.36
● Am Funds 2060 Trgt Ret R6 - 106216	0.85%	\$54,905.67
● T Rowe Price Gbl Stk I - 106216	0.78%	\$50,603.54
● MFS Value R6 - 106216	0.73%	\$47,209.41
● Victory Syc Est Val Y - 106216	0.55%	\$35,671.53
● T Rowe Spec Mod Grwth - 106216	0.35%	\$22,780.86
● BlackRock High Yield Bd K - 106216	0.28%	\$18,356.21
● Carillon Eagle Mid Cap Gr - 106216	0.16%	\$10,625.20
● PIMCO Inc Institutional - 106216	0.10%	\$6,208.17
● Vanguard Explorer Admiral - 106216	0.09%	\$5,983.50
● Undiscvrd Mgrs Behav Val - 106216	0.09%	\$5,723.07
TOTAL	100%	\$6,455,280.70

Town of Fairfield 401(a) and 457(b) Plans
Mutual Fund Returns and Rankings by Morningstar Category As of 3/31/2023

	Ticker	Morningstar Rating Overall	One Quarter		One Year		Three Year		Five Year		Prospectus Net Expense Ratio
			Return	Rank	Return	Rank	Return	Rank	Return	Rank	
U.S. Equity											
Large Blend											
Vanguard 500 Index Admiral	VFIAX	★★★★★	7.49	21	-7.77	53	18.56	26	11.15	17	0.04
Russell 1000 TR USD	—	—	7.46	23	-8.39	67	18.55	27	10.87	25	—
Median	—	—	6.45		-7.61		17.92		9.99		0.72
Large Growth											
T. Rowe Price Blue Chip Growth I	TBCIX	★★	16.45	17	-18.28	87	9.42	91	7.43	86	0.56
Russell 1000 Growth TR USD	—	—	14.37	30	-10.90	34	18.58	10	13.66	8	—
Median	—	—	12.65		-12.48		14.76		10.38		0.86
Large Value											
MFS Value R6	MEIKX	★★★	-1.42	82	-3.67	30	16.73	73	7.99	44	0.43
Russell 1000 Value TR USD	—	—	1.01	34	-5.91	66	17.93	60	7.50	55	—
Median	—	—	0.20		-5.01		18.61		7.68		0.81
Mid-Cap Blend											
Vanguard Mid Cap Index Admiral	VIMAX	★★★★	3.87	41	-9.86	75	18.73	60	8.13	27	0.05
Russell Mid Cap TR USD	—	—	4.06	37	-8.78	68	19.20	51	8.05	29	—
Median	—	—	3.74		-6.84		19.25		7.17		0.89
Mid-Cap Growth											
Carillon Eagle Mid Cap Growth R6	HRAUX	★★★★	6.74	68	-11.30	51	16.14	30	8.67	44	0.64
Russell Mid Cap Growth TR USD	—	—	9.14	26	-8.52	25	15.20	44	9.07	38	—
Median	—	—	7.69		-11.12		14.85		8.35		1.00
Mid-Cap Value											
Victory Sycamore Established Value Y	VEVYX	★★★★★	1.71	34	-1.36	5	25.99	14	10.61	2	0.61
Russell Mid Cap Value TR USD	—	—	1.32	47	-9.22	85	20.69	63	6.54	50	—
Median	—	—	1.24		-6.35		21.70		6.52		0.90
Small Blend											
Vanguard Small Cap Index Adm	VSMAX	★★★★	3.74	31	-9.33	63	19.67	57	6.76	25	0.05
Russell 2000 TR USD	—	—	2.74	57	-11.61	81	17.51	81	4.71	69	—
Median	—	—	2.99		-8.47		20.47		5.73		0.96

Town of Fairfield 401(a) and 457(b) Plans
Mutual Fund Returns and Rankings by Morningstar Category As of 3/31/2023

	Ticker	Morningstar Rating Overall	One Quarter		One Year		Three Year		Five Year		Prospectus Net Expense Ratio
			Return	Rank	Return	Rank	Return	Rank	Return	Rank	
U.S. Equity											
Small Growth											
Vanguard Explorer Adm	VEXRX	★★★★	7.02	39	-9.16	24	19.75	13	9.15	16	0.34
Russell 2000 Growth TR USD	—	—	6.07	59	-10.60	41	13.36	67	4.26	85	—
Median	—	—	6.48		-11.70		15.17		6.99		1.10
Small Value											
Undiscovered Managers Behavioral Val L	UBVLX	★★★★★	0.50	65	-4.06	19	32.66	8	8.29	11	0.90
Russell 2000 Value TR USD	—	—	-0.66	84	-12.96	93	21.01	80	4.55	69	—
Median	—	—	1.25		-7.24		24.11		5.49		1.09
International Equity											
Foreign Large Blend											
MFS Intl Diversification R6	MDIZX	★★★★	7.61	58	-1.91	47	11.44	75	4.56	11	0.72
Vanguard FTSE All-Wld ex-US Idx Admiral	VFWAX	★★★	6.73	79	-4.03	74	12.47	60	2.67	57	0.12
MSCI ACWI Ex USA NR USD	—	—	6.87	75	-5.07	84	11.80	70	2.47	64	—
Median	—	—	7.92		-2.23		12.83		2.87		0.89
Global Large-Stock Growth											
T. Rowe Price Global Stock I	TRGLX	★★★★	8.50	69	-12.27	82	15.83	20	10.09	8	0.67
MSCI ACWI Growth NR USD	—	—	13.78	20	-10.02	65	14.67	31	9.01	22	—
Median	—	—	9.38		-9.13		13.43		7.17		0.99
Taxable Bond											
Stable Value											
MissionSquare PLUS Fund R10	—	—	0.61	27	2.14	21	2.04	11	2.18	10	—
USTREAS T-Bill Cnst Mat Rate 3 Yr	—	—	2.15	1	-0.26	100	-1.83	100	0.94	99	—
Median	—	—	0.54		1.84		1.60		1.77		—
High Yield Bond											
BlackRock High Yield Bond K	BRHYX	★★★★★	3.92	10	-2.99	36	6.46	25	3.38	14	0.51
ICE BofA US High Yield TR USD	—	—	3.72	20	-3.56	49	5.84	41	3.06	26	—
Median	—	—	3.23		-3.67		5.57		2.50		0.78

Town of Fairfield 401(a) and 457(b) Plans

Mutual Fund Returns and Rankings by Morningstar Category As of 3/31/2023

	Ticker	Morningstar Rating Overall	One Quarter		One Year		Three Year		Five Year		Prospectus Net Expense Ratio
			Return	Rank	Return	Rank	Return	Rank	Return	Rank	
Taxable Bond											
Intermediate Core Bond											
Vanguard Interm-Term Bond Index Adm	VBILX	★★★★	3.59	8	-4.16	16	-2.25	54	1.56	8	0.07
Bloomberg US Agg Bond TR USD	—	—	2.96	65	-4.78	30	-2.77	75	0.91	39	—
Median	—	—	3.12		-5.16		-2.17		0.80		0.50
Intermediate Core-Plus Bond											
Fidelity Advisor® Total Bond Z	FBKWX	★★★★★	3.28	37	-4.73	18	-0.33	20	1.74	11	0.36
Bloomberg US Universal TR USD	—	—	2.93	69	-4.61	15	-2.02	79	1.05	43	—
Median	—	—	3.17		-5.64		-1.18		0.92		0.64
Multisector Bond											
PIMCO Income Instl	PIMIX	★★★★	2.56	53	-1.30	11	3.59	38	2.26	20	0.51
Bloomberg US Universal TR USD	—	—	2.93	33	-4.61	65	-2.02	98	1.05	73	—
Median	—	—	2.62		-3.91		3.30		1.68		0.85
Allocation											
Allocation--30% to 50% Equity											
T. Rowe Price Spectrum Cnsrv Allc I	PPIPX	★★★★	3.86	37	-5.73	52	6.59	29	3.71	35	0.50
Morningstar Mod Con Tgt Risk TR USD	MSAAMMCR	—	3.90	34	-5.44	42	5.06	71	3.77	34	—
Median	—	—	3.57		-5.67		5.74		3.32		0.84
Allocation--50% to 70% Equity											
T. Rowe Price Spectrum Moderate Allc I	TPPAX	★★★	4.85	34	-7.52	81	9.02	66	4.64	64	0.59
Morningstar Mod Tgt Risk TR USD	MSAAMMOR	—	4.33	50	-6.22	44	8.47	78	4.80	58	—
Median	—	—	4.32		-6.40		9.68		5.04		0.93
Allocation--70% to 85% Equity											
T. Rowe Price Spectrum Mod Gr Allc I	TGIPX	★★★	5.60	30	-9.00	95	11.55	73	5.47	56	0.63
Morningstar Mod Agg Tgt Risk TR USD	MSAAMMAR	—	4.88	51	-6.62	45	12.12	54	5.81	39	—
Median	—	—	4.89		-6.75		12.29		5.60		0.95
Target-Date 2000-2010											
American Funds 2010 Trgt Date Retire R6	RFTTX	★★★★★	2.59	90	-3.68	1	6.46	14	4.54	1	0.28
Morningstar Lifetime Mod 2010 TR USD	MSAAM10M	—	3.75	65	-6.20	95	5.41	43	3.87	29	—

Town of Fairfield 401(a) and 457(b) Plans

Mutual Fund Returns and Rankings by Morningstar Category As of 3/31/2023

	Ticker	Morningstar Rating Overall	One Quarter		One Year		Three Year		Five Year		Prospectus Net Expense Ratio
			Return	Rank	Return	Rank	Return	Rank	Return	Rank	
Allocation											
Target-Date 2000-2010											
Median	—	—	3.86		-4.95		4.92		3.54		0.45
Target-Date 2015											
American Funds 2015 Trgt Date Retire R6	RFJTX	★★★★★	2.83	91	-4.27	1	7.01	16	4.78	1	0.30
Morningstar Lifetime Mod 2015 TR USD	MSAAM15M	—	4.05	60	-7.23	100	5.54	71	3.92	46	—
Median	—	—	4.23		-5.42		6.13		3.88		0.51
Target-Date 2020											
American Funds 2020 Trgt Date Retire R6	RRCTX	★★★★★	3.11	91	-4.51	4	7.32	32	4.99	3	0.30
Morningstar Lifetime Mod 2020 TR USD	MSAAM20M	—	4.32	55	-7.95	99	6.03	70	4.07	53	—
Median	—	—	4.38		-5.73		6.97		4.15		0.55
Target-Date 2025											
American Funds 2025 Trgt Date Retire R6	RFDTX	★★★★★	3.70	80	-4.99	12	8.50	26	5.51	1	0.32
Morningstar Lifetime Mod 2025 TR USD	MSAAM25M	—	4.58	58	-8.37	99	6.97	75	4.31	56	—
Median	—	—	4.80		-6.00		7.80		4.37		0.59
Target-Date 2030											
American Funds 2030 Trgt Date Retire R6	RFETX	★★★★★	4.52	74	-5.45	14	10.02	26	6.03	1	0.33
Morningstar Lifetime Mod 2030 TR USD	MSAAM30M	—	4.84	63	-8.49	97	8.55	79	4.70	66	—
Median	—	—	5.21		-6.43		9.61		4.95		0.60
Target-Date 2035											
American Funds 2035 Trgt Date Retire R6	RFFTX	★★★★★	5.08	73	-6.10	25	12.33	17	6.86	1	0.35
Morningstar Lifetime Mod 2035 TR USD	MSAAM35M	—	5.10	72	-8.22	91	10.61	78	5.18	68	—
Median	—	—	5.64		-6.77		11.46		5.48		0.61
Target-Date 2040											
American Funds 2040 Trgt Date Retire R6	RFGTX	★★★★★	5.68	59	-6.45	29	13.37	31	7.20	1	0.36
Morningstar Lifetime Mod 2040 TR USD	MSAAM40M	—	5.31	78	-7.81	85	12.51	67	5.62	67	—
Median	—	—	5.91		-6.99		12.93		5.87		0.64
Target-Date 2045											
American Funds 2045 Trgt Date Retire R6	RFHTX	★★★★★	5.89	66	-6.72	34	13.53	60	7.24	3	0.37

Town of Fairfield 401(a) and 457(b) Plans
Mutual Fund Returns and Rankings by Morningstar Category As of 3/31/2023

	Ticker	Morningstar Rating Overall	One Quarter		One Year		Three Year		Five Year		Prospectus Net Expense Ratio
			Return	Rank	Return	Rank	Return	Rank	Return	Rank	
Allocation											
Target-Date 2045											
Morningstar Lifetime Mod 2045 TR USD	MSAAM45M	—	5.46	83	-7.50	70	13.69	56	5.86	71	—
Median	—	—	6.17		-7.06		13.87		6.17		0.62
Target-Date 2050											
American Funds 2050 Trgt Date Retire R6	RFITX	★★★★★	6.15	58	-6.93	39	13.54	70	7.20	4	0.38
Morningstar Lifetime Mod 2050 TR USD	MSAAM50M	—	5.53	89	-7.33	58	14.11	49	5.92	73	—
Median	—	—	6.31		-7.16		14.09		6.21		0.63
Target-Date 2055											
American Funds 2055 Trgt Date Retire R6	RFKTX	★★★★	6.36	49	-7.11	49	13.31	80	7.07	8	0.38
Morningstar Lifetime Mod 2055 TR USD	MSAAM55M	—	5.55	91	-7.33	57	14.16	54	5.86	80	—
Median	—	—	6.35		-7.13		14.24		6.25		0.64
Target-Date 2060											
American Funds 2060 Trgt Date Retire R6	RFUTX	★★★★	6.38	50	-7.22	52	13.20	82	7.01	9	0.38
Morningstar Lifetime Mod 2060 TR USD	MSAAM60M	—	5.55	91	-7.36	59	14.13	62	5.77	83	—
Median	—	—	6.37		-7.17		14.35		6.30		0.64
Money Market											
Money Market - Taxable											
Fidelity® Inv MM Fds Government III	FCGXX	—	1.01	59	2.05	84	0.69	83	1.07	67	0.43
ICE BofA USD 3M Dep OR CM TR USD	—	—	1.11	3	2.39	47	1.02	2	1.58	1	—
Median	—	—	1.02		2.37		0.79		1.14		0.35
Sector Equity											
Real Estate											
DFA Real Estate Securities I	DFREX	★★★★	1.78	80	-19.42	33	10.17	50	6.57	24	0.18
S&P United States REIT TR USD	—	—	2.72	42	-19.08	29	12.03	15	6.03	42	—
Median	—	—	2.55		-20.07		10.17		5.82		0.98

Town of Fairfield 401(a) and 457(b) Plans

Mutual Fund Returns and Rankings by Morningstar Category Disclosures

Morningstar Categories for each fund are determined by Morningstar and may change as the fund's investment style changes.

Fund Rankings are determined by Morningstar and are based on a comparison of returns to other funds with similar investment styles for the indicated time period.

Morningstar Ratings for each fund are determined by Morningstar's proprietary rating system. Five stars is the highest rating. A higher rating should not be construed to indicate a superior fund and does not imply that a fund will achieve superior returns in the future.

Performance is net of mutual fund fees but gross of Adviser fees. Over time ongoing adviser fees can reduce the value of an investment portfolio. Index and mutual fund returns are historical and include reinvestment of dividends and capital gains.

Returns were supplied by Morningstar and have not been independently verified. Three and Five year returns are annualized.

All information in this exhibit has been obtained from sources believed to be reliable but the accuracy cannot be guaranteed.

Past performance is not indicative of future performance.



AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 10th day of April in the year 2023
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

Town of Fairfield
725 Old Post Road
Fairfield, CT 06824

and the Construction Manager:
(Name, legal status, address, and other information)

Bismark Construction Company, Inc.
100 Bridgeport Avenue
Milford, CT 06460

for the following Project:
(Name, location, and detailed description)

Penfield Pavilion Soil Remediation and Building Foundation Reconstruction
323 Fairfield Beach Road
Fairfield, CT 06824

The Architect:
(Name, legal status, address, and other information)

Joseph Sepot Architects
225 Montowese Street
Branford, CT 06405

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
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11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
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15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

This is a foundation reconstruction project at the Penfield Pavilion. The scope of the work is to comply with FEMA flood zone requirements. This will be accomplished by reinstating engineers' foundations to the agreed elevation of 8 feet. The work will include required soil remediation removal and replacement as directed by the Town of Fairfield's hygienist, Weston & Sampson.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

Init.

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User Notes:

(1885823321)

(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:
DD Design Development to CD Plans – June 29, 2023
- .2 Construction commencement date:
September 5, 2023
- .3 Substantial Completion date or dates:
June 14, 2024
- .4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

To meet the Project requirements construction will commence in September 2023. This will be completed under one phase. The project will include enabling, locker room building remediation, Pavilion Building foundation reconstruction and new building decks and perimeter upgrades. The final project cost will be finalized upon acceptance of bid offers, allowances and fees presented to GMP value. This final value will be adjusted by a contract change under amendment 1 portion of the contract.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Elias Ghazal
Project Manager - Construction
Town of Fairfield

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

Joseph Sepot Architects
Weston & Sampson, Malcolm Beeler, LEP

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

Langan Engineering (Under Joseph Sepot Architects)
Clay Patterson

.2 Civil Engineer:

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

Soils – Weston & Sampson
Malcolm Beeler, LEP

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Joseph Sepot
Joseph Sepot Architects
225 Montowese Street
Branford, CT 06405

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Lisa Johnson
Bismark Construction Co.
100 Bridgeport Avenue
Milford, CT 06460

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

Init.

/

(List any Owner-specific requirements to be included in the staffing plan.)

N/A

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

N/A

§ 1.1.15 Other Initial Information on which this Agreement is based:

N/A

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

N/A

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner

and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner

shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

See attached Proposal Letter dated 4/10/2023, Exhibit C
Pre-Construction Pre Town-Approval - \$36,000
CM Pre-Construction Fee Through July 2023 - \$38,019.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate
Project Executive	\$165.00 / hr
Project Manager	\$116.00 / hr
Project Estimator	\$105.00 / hr
Assistant Project Manager	\$75.00 / hr
Project Engineer	\$85.00 / hr
Project Superintendent	\$115.00 / hr
Carpenter	\$94.00 / hr
Laborer	\$88.00 / hr
Clerical	\$55.00 / hr
Safety Officer	\$105.00 / hr

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

1 % One

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

To be agreed upon execution of the GMP Amendment

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

To be agreed upon execution of the GMP Amendment

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15%

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Ten percent (10 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

N/A

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

To be agreed upon execution of the GMP Amendment

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

Clerical / Assistant Project manager for shop drawing phase and closeout

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall

be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than () days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5%

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Staff costs

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

N/A

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner’s prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager’s Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations,

audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

N/A

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

N/A %

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

N/A

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Article 15 of AIA Document A201–2017
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

N/A

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate for bodily injury and property damage.

See attached Certificate of Insurance, Exhibit D

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (\$) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

See attached Certificate of Insurance, Exhibit D

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million dollars (\$ 1,000,000.00) each accident, one million dollars (\$ 1,000,000.00) each employee, and five million dollars (\$ 5,000,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.
See attached Certificate of Insurance, Exhibit D

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

N/A

Limits

N/A

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

N/A

§ 14.5 Other provisions:

N/A

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

Init.

.6 Other Exhibits:
(Check all boxes that apply.)

☐ AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)



CONSTRUCTION MANAGER (Signature)

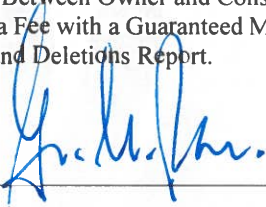
Gregory M Raucci President
(Printed name and title)

Init.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Gregory M. Raucci, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:58:38 ET on 04/14/2023 under Order No. 2114339036 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

President

(Title)

4/14/23

(Dated)

AIA® Document B133® – 2019

Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the Twenty-seventh day of October in the year Two Thousand Twenty-two
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address, and other information)

Town of Fairfield
725 Old Post Road
Fairfield CT 06045

and the Architect:
(Name, legal status, address, and other information)

Joseph T. Sepot, Architects, Professional Corporation
225 Montowese Street
Branford, CT 06405
Telephone Number: 203 483-5229

for the following Project:
(Name, location, and detailed description)

Alterations to Penfield Pavilion
323 Fairfield Beach Road
Fairfield CT 06824

The Construction Manager (if known):
(Name, legal status, address, and other information)

Greg Raucci Sr Bismark Construction
100 Bridgeport Ave
Milford CT 06460

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; A133–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134–2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

1. Below-floor renovation to bring the structure into compliance with FEMA and DEEP
2. Replace existing outdoor decking, stairs, and ramping
3. Alternate #1
Provide survey
4. Alternate #2
 - Misc. interior Renovation of the Main Building including:
 - Convert the existing Office 117 into a Bridal Room
 - Enlarge warming kitchen into the adjacent storage room
 - Replace the existing wainscot in the Gathering Room
 - Explore non-structural options for better utilization of Corridor 116 near the toilet rooms
 - New painting scheduled of rooms being renovated
 - Replace existing exterior lighting mounted on the building
5. Alternate #3
 - As Built Drawings

§ 1.1.2 The Project's physical characteristics:

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(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

DD Design Development to CD Plans - June 29, 2023

.2 Construction commencement date:

September 5, 2023

.3 Substantial Completion date or dates:

June 14, 2024

.4 Other milestone dates:

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

☒ [X] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

☐ [] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

DD Design Development to CD Plans - June 29, 2023

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

NA

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

Init.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
(List name, address, and other contact information.)

Elias Ghazal
Project Manager – Construction
Town of Fairfield

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

NA

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Construction Manager:
(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)

.2 Land Surveyor:

NA by Architect

.3 Geotechnical Engineer:

NA by Architect

.4 Civil Engineer:

NA by Architect

.5 Other consultants and contractors:

(List any other consultants and contractors retained by the Owner.)

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:

Init.

(List name, address, and other contact information.)

Joe Sepot, Joseph Sepot Architects
225 Montowese St
Branford CT 06405
203 483-5229

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Paul Sheenan MHA, Inc
151 Meadow Street
Branford, CT 06405

.2 Mechanical Engineer:

Frank Centore Centek Engineers
63-2 North Branford Road
Branford CT 06405

.3 Electrical Engineer:

Frank Centore Centek Engineers
63-2 North Branford Road
Branford CT 06405

§ 1.1.12.2 Consultants retained under Supplemental Services:

Geotechnical & Civil Engineer:
Clay Patterson, Langan
Long Wharf Maritime Center
555 Long Wharf Drive
New Haven, CT 06511

§ 1.1.13 Other Initial Information on which the Agreement is based:

NA

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust

Init.

the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 Insurance. The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.6.1 Commercial General Liability with policy limits of not less than one million (\$ 1,000,000) for each occurrence and two million (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than two million (\$ 2,000,000) each accident, one million (\$ 1,000,000) each employee, and one million (\$ 1,000,000) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million (\$ 2,000,000) per claim and two million (\$ 2,000,000) in the aggregate.

§ 2.6.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 3.3 Schematic Design Phase Services

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Assistance with Selection of Construction Manager	Not provided
§ 4.1.1.2 Programming	Owner
§ 4.1.1.3 Multiple Preliminary Designs	Not Provided

§ 4.1.1.4	Measured drawings	Architect base contract
§ 4.1.1.5	Existing facilities surveys	Not Provided
§ 4.1.1.6	Site evaluation and planning	Architect base contract
§ 4.1.1.7	Building Information Model management responsibilities	Not Provided
§ 4.1.1.8	Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9	Civil engineering	Architect base contract
§ 4.1.1.10	Landscape design	Architect base contract
§ 4.1.1.11	Architectural interior design	Architect (Alternate #2)
§ 4.1.1.12	Value analysis	Not Provided
§ 4.1.1.13	Cost estimating	Not Provided
§ 4.1.1.14	On-site project representation	Not Provided
§ 4.1.1.15	Conformed documents for construction	Not Provided
§ 4.1.1.16	As-designed record drawings	Architect
§ 4.1.1.17	As-constructed record drawings	Not Provided (Alternate #3)
§ 4.1.1.18	Post-occupancy evaluation	Not Provided
§ 4.1.1.19	Facility support services	Not Provided
§ 4.1.1.20	Tenant-related services	Not Provided
§ 4.1.1.21	Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.22	Telecommunications/data design	Not Provided
§ 4.1.1.23	Security evaluation and planning	Not Provided
§ 4.1.1.24	Commissioning	Not Provided
§ 4.1.1.25	Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26	Historic preservation	Not Provided
§ 4.1.1.27	Furniture, furnishings, and equipment design	Not Provided
§ 4.1.1.28	Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29	Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

NA

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

NA

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

Init.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-

- provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 NA () reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 NA () visits to the site by the Architect during construction
- .3 NA () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 NA () inspections for any portion of the Work to determine final completion

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within Thirteen (13) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as

applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials,

and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official

regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☒ [X] Arbitration pursuant to Section 8.3 of this Agreement

☐ [] Litigation in a court of competent jurisdiction

☐ [] Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

NA

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

NA

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
(Insert amount)

NA

.2 Percentage Basis
(Insert percentage value)

NA () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
(Describe the method of compensation)

Phase I	Project Investigation and Analysis	\$ 15,410.00 NTE
Phase II	Schematic Design	\$ 42,275.00 NTE
Phase III	Design Development	\$ 63,235.00 NTE
Phase IV	Contracting & Bidding Oversight	\$ 8,945.00 NTE
Phase V*	Construction Administration	\$ 58,335.00 NTE
Allowance	MEP	\$ 20,000.00 NTE

Alternate #1	Survey	\$ 12,000.00 NTE
Alternate #2	Interior Renovation	\$ 20,000.00 NTE
Alternate #3	As-Built Drawings	\$ 5,000.00 NTE

Total \$245,200.00 NTE

*Construction Administration is based on a 13-month period ending July 1, 2024

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

NA

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

Init.

(Insert amount of, or basis for, compensation.)

Lump sum proposal based on scope of work

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

Lump sum proposal based on scope of work

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	percent (%)
Design Development Phase	percent (%)
Construction Documents Phase	percent (%)
Construction Phase	percent (%)
<hr/>		
Total Basic Compensation	one hundred percent (100 %)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate (\$0.00)
Langan	
Principal	350
Senior Project Mgr/ Assoc	300
Project Manager	250
Staff Personal	175
MHA	
Principal	175
Project Manager	140
Senior Engineer	125
Staff Engineer	110
Construction Administrator	100
CAD/ Revit Draftsperson	90
Administrative Staff	40
JSA	
Principal	225
Senior Project Manager	165
Project Manager	135
Interior Designer	120
Architectural Designer	110
Draftsperson	95
Administrative Staff	65

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus one point one percent (1.1 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)

NA

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of NA (\$) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of NA (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid NA () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

% 0.0 per annum

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

Exclusions

This contract does not include the following:

Survey and removal of environmental/ hazmat materials

Landscaping & site lighting design

Telecommunications, security design

Building commissioning, retro-commissioning, re-commissioning

Monitoring of contractor's safety practices and compliance with OSHA standards

Cost estimating services

Cost of securing approval/ permits of the authorities having jurisdiction over the project

Parking studies and traffic engineering

Selection of equipment and furnishing by Owner

Structural engineering for all interior design work, this work is to be non-structural in nature

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B133™—2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition

- .2 AIA Document E203™—2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:

(Insert the date of the E203-2013 incorporated into this agreement.)

Init.

NA

.3 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

☒ [NA] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.

(Insert the date of the E234-2019 incorporated into this agreement.)

☐ [] Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

.4 Other documents:

(List other documents, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

(Printed name and title)

ARCHITECT *(Signature)*

Joseph T Sepot AIA President

(Printed name, title, and license number, if required)



November 11, 2022

Town of Fairfield
Engineering Department
725 Old Post Road
Fairfield, CT 06824

Attention: Mr. Elias Ghazal, Project Manager
eghazal@fairfieldct.org

Reference: Proposed Agreement for Design Professional Services
Coastal Engineering and Flood Impact Analysis
Penfield Pavilion
RACE Proposal No. P2022176

Dear Mr. Ghazal:

RACE COASTAL ENGINEERING, INC. ("RACE") herein submits to you this proposed Agreement for Design Professional Services related to coastal engineering and flood impact analysis at the Penfield Pavilion. The purpose of this Agreement is to provide you with our understanding of **RACE's** Scope of Services and estimated fees to perform these services. The services are to be provided to the **Town of Fairfield** ("Client").

1. SCOPE OF SERVICES:

The following paragraphs identify the specific Scope of Services to be provided. **RACE's** Scope of Services will include the following Phases:

- Phase 1: Coastal Analysis of Foundation Elements
- Phase 2: Numerical Modeling of Penfield Pavilion Site and Adjacent Upland
- Phase 3: Meetings

Services specifically included in the Scope of Services are identified as *Basic Services*. Fees for the *Basic Services* are listed in Section 3 of this Agreement. During the course of the Work, the Client may authorize services that are not specifically included in the Scope of Services. Such services are identified as *Additional Services*. The fees for *Additional Services* are NOT included in the fees for the *Basic Services*. The fees for *Additional Services* are in accordance with Section 3 of this Agreement.

Phase 1: Coastal Analysis of Foundation Elements

RACE will review the building foundation elements (piles, columns, and grade beams) for:

- Wave height transformation
- Wave run-up
- Erosion / Scour
- Wave reflection / diversion
- Water velocity

These will be reviewed for three distinct cases, including existing, proposed interim, and final conditions. Client shall be responsible for providing details on proposed interim and final conditions. Additionally, the Client shall provide current topographic survey and building structural drawings representing existing conditions.

RACE will make a site visit to review existing conditions and obtain 3 sand samples for grain size analyses.

Analysis performed as part of this Phase will include 1-dimension calculations through empirical formulations in both the FEMA P-55 Coastal Construction Manual and U.S. Army Corps of Engineers Coastal Engineering Manual.

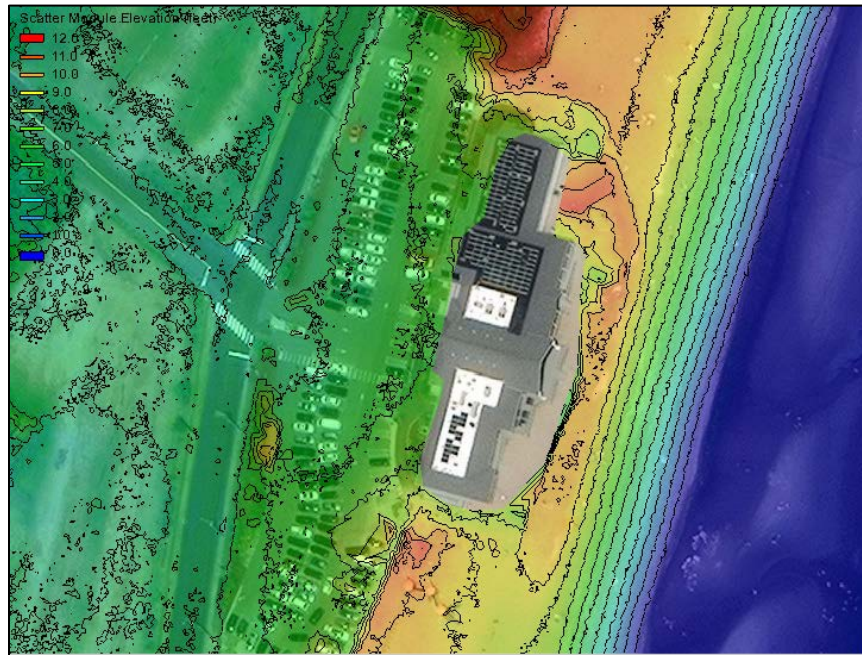
These calculations have typically been acceptable to regulatory authorities that review these matters, including FEMA, CT-DEEP, and Local Building and Zoning Officials.

RACE will prepare a calculation package and summary letter including the results of our analysis. Deliverables shall include report and tables summarizing the design loads on the foundation element as well as wave heights, runup elevation, scour depths and water velocities for the existing and proposed conditions.

Phase 2: Numerical Modeling of Penfield Pavilion Site and Adjacent Upland

In our experience, typical 1-D analyses described in Phase 1 scope narrative is typically sufficient for building analysis. However, the Town is being asked to lower the grade approximately two (2) feet at the Penfield Pavilion Site which may result in unintended consequences related to scour and flooding of adjacent upland areas. Based on review of current LIDAR data shown below, this lowering of grade has the potential to create a potential breach in the dune system with a limited section at El. +8' NAVD and remaining adjacent shoreline at El. +10' NAVD to EL. +12' NAVD.





2016 CT LiDAR Data

Based on the above, RACE believes it to be prudent to investigate the macro scale of the building site and not just the foundation elements.

RACE will prepare a 2-D numerical model, CMS-Flow to better understand where the impacts of site grade modification on the site and adjacent upland areas. The analysis will consider the 1% annual event with and without sea level rise as requested in the RFP.

CMS-Flow is a hydrodynamic circulation model developed by the US Army Corps of Engineers Coastal and Hydraulics Laboratory. CMS-Flow is a two-dimensional, depth-integrated model for simulating wave-averaged hydrodynamics and nonuniform sediment transport and morphology change in coastal waters. CMS-Flow is interfaced through the Surface-water Modeling System (SMS) which can provide before and after graphical representation of waves, scour, and flow at the site due to storm events.

RACE will prepare a summary letter of results of our analysis with graphics from the model.

Phase 3: Meetings

As part of Basic Services, RACE will attend 3 meetings with the Town. It is anticipated that these will include a Project Kick-off Meeting, Phase 1 Review Meeting, and Phase 2 Review Meeting. RACE will attend additional meetings as may be requested by the Town as *Additional Service*.



2. EXCLUSIONS AND LIMITATIONS:

The Scope of Services described under Section 1 of this Agreement include specific phases and activities that **RACE** will perform, which are considered as *Basic Services*. Certain information may be required to be provided by others prior to or during the performance of such work which is not part of the *Basic Services*. Work to be performed by others or work not specifically listed as *Basic Services* within the Scope of Services consist of, but are not limited, to the exclusions listed below. The Client may authorize **RACE** to perform any of the Phases listed below or other Phases, and such Phases shall be considered as *Additional Services*.

- | | |
|--|---|
| 1. Land surveying | 11. Design of storm-water management infrastructure |
| 2. Sediment sampling and testing | 12. Design of repairs to ancillary structures. |
| 3. Soil test boring operations | 13. Special Inspections |
| 4. Sampling and/or testing (destructive or non-destructive) of materials | 14. Construction Management |
| 5. Professional Design Services other than specifically noted herein | 15. Corrective revisions due to errors in fabrication or placement of items by a construction contractor or his sub-contractors |
| 6. Attendance to meetings except as noted herein | 16. Review and approval of alternate designs proffered by the contractor |
| 7. Regulatory application and other fees that may be required by federal, state, or local agencies | 17. Assessment of changes that may be required due to unforeseen conditions |
| 8. Geotechnical investigations and geotechnical engineering | 18. Post-Construction survey requirements as may be required by regulatory agencies |
| 9. Landscape Architecture and preparation of planting plans, plant list, or plant specifications | 19. Reproduction, mailing and courier costs |
| 10. Design of utilities such as electrical, water, and sanitary service | |

Basic Services to be provided in this Agreement are based on information provided by the Client. It shall be understood by the Client that conditions may be revealed during the course of the project that were unknown during preparation of this Agreement. Such conditions may require *Additional Services* to be performed.

It shall be understood by the Client that **RACE** has no control over regulatory authorities having jurisdiction, statutes, or site conditions that the project may be subject to. Any opinion of eligibility for authorization of any proposed structure or activity is made on the basis of professional judgment and experience. **RACE** makes no warranty, express or implied, that a proposed structure or activity, in whole or portion thereof, will be authorized by those agencies having jurisdiction.



3. ESTIMATED FEES:

Basic Services

The Scope of Services identified in Section 1 includes the *Basic Services* of this Agreement. The estimated fees for the *Basic Services* are broken down by Phase on the following Fee Schedule. A Retainer Fee in the amount of **\$-0-** shall be paid by the Client to **RACE** as a condition to commence service. The retainer shall be applied against the final invoice.

FEE SCHEDULE

Summary Phase Description	Budgeted Hours	Basic Services Fees	Estimated Pass-Thru Fees	Total Basic Services Fees
Phase 1: Coastal Analysis of Foundation Elements	57	\$ 9,473	\$ 1,000 ⁽¹⁾	\$ 10,473
Phase 2: Numerical Modeling of Penfield Pavilion Site and Adjacent Upland	112	\$ 19,260	\$ 0	\$ 19,260
Phase 3: Meetings	12	\$ 2,520	\$ 50 ⁽²⁾	\$ 2,570
PROJECT TOTAL	181	\$ 31,253	\$ 1,050	\$ 32,303

1. Material Testing – Sieve Analysis

2. Travel

Additional Services

During the course of the Work, the Client may authorize services that are not specifically included in the Scope of Services. Such services are identified as *Additional Services*. The fees for *Additional Services* are NOT included in the fees for the *Basic Services*. All time and materials invoices and all *Additional Services* which may be required or requested by the Client during the performance of the *Basic Services* shall be invoiced per the following Rate Schedule for the professional services indicated. These rates are subject to change at the beginning of each calendar year.

RATE SCHEDULE

POSITION	HOURLY RATE	POSITION	HOURLY RATE
Principal	\$225.00	Project Engineer	\$150.00
VP of Coastal Engineering	\$225.00	Engineer	\$130.00
Project Manager	\$195.00	Field Technician	\$130.00
Senior Engineer	\$195.00	CAD Operator	\$120.00
Coastal Engineer	\$150.00	Administrative	\$75.00
Expert Witness Testimony: Court appearances and other expert witness testimony services are invoiced at a fixed rate of \$3,500.00 per day. All travel and related expenses are invoiced as reimbursable expenses and include a 10% carrying charge.			



4. GENERAL TERMS AND CONDITIONS:

This Agreement shall be governed by the laws of the State of Connecticut.

Payment Terms All reimbursable expenses shall be invoiced at direct cost plus 10% overhead expense. Reimbursable expenses shall include such expenses as: overnight deliveries; courier services; reproduction of documents; shipping and mailing expenses; and any other disbursement including, without limitation, application fees made on behalf of the Client. The total fee payable, projected prior to commencement of services, if stated, shall be a reasonable estimate subject to change. The final fee shall not exceed by more than 10% of such estimate, exclusive of reimbursable expenses, without prior written approval of the Client. Where the fee arrangement is to be on an hourly basis, the rates shall be those included as a part of this Agreement.

Invoices for professional services shall be submitted, at the option of the Engineer, either upon completion of such services or on a monthly basis. Invoices shall be payable within thirty (30) days after the date of the invoice. All billings over thirty (30) days past due will be subject to interest charges of 1.0% per month on the unpaid balance. In the event that part or all of the account remains unpaid in full, ninety (90) days after initial billing, the Client shall be responsible for all costs of collection including, without limitation, reasonable attorney's fees. This Agreement is notice, where required, that the Engineer shall file a lien whenever necessary to collect past due amounts. Failure to make payment within thirty (30) days of invoice shall constitute a release of **RACE** from any and all claims which client may have, either in tort or contract, and whether known or unknown at the time.

Unconditional Payment Payment to **RACE** is expressly not conditioned upon the Client receiving any payment from third parties who are not a party to this Agreement, such as property owners, developers, funding agencies.

Risk Allowance The parties to this Agreement agree that the risks of the proposed project shall be allocated such the total liability of **RACE** to the Client for any and all claims, injuries, losses, expenses, damages or claim expenses arising out of this Agreement from any cause or causes shall not exceed ten (10) times the total fee for services of **RACE** at the time such claims or causes arise or \$100,000, whichever is less. Such claims or causes include, without limitation, negligence, errors, omissions, strict liability, breach of contract and breach of warranty.

Standard of Care The Standard of Care as defined under this Agreement shall mean the rendering of services with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances, and do so in a reasonably careful and prudent manner. Services requested by the Client, which are in the opinion of **RACE**, beyond the normal Standard of Care, are considered as *Additional Services*.

Flow of Work Fees assume a steady progression of the work from start to finish. A start-up fee will be charged to resume work delayed for more than 30 days for any reason. This Agreement for engineering services is based upon the assumption that the Client will provide all required information in a timely manner. **RACE** will not be expected to proceed with portions of his work until necessary information to be provided by the Client and requested in writing by **RACE** has been provided. If the Client requests **RACE** to perform work out of sequence or based upon preliminary information, then additional time required to perform work under these circumstances or to revise work based on revised project data or criteria supplied by the Client will be billable as *Additional Services*.

Opinion of Probable Costs In providing an Opinion of Probable Cost for any construction work, it shall be understood by the Client that **RACE** has no control over the cost or availability of labor, equipment, materials, market conditions, or the Contractors method of pricing. Any Opinion of Probable Cost provided by **RACE** is made on the basis of professional judgment and experience. **RACE** makes no warranty, express or implied, that any bids or negotiated cost of the Work will not vary from the Opinion of Probable Cost provided.

Ownership of Documents All documents produced by **RACE** under this Agreement, such as drawings, specifications, and computer files, are instruments of service and shall remain the property of **RACE** and may not be altered or used by the Client for any other endeavor without the written consent of **RACE**.

Concealed Conditions It is understood by the parties to this Agreement that the evaluation, reconstruction or rehabilitation of an existing structure requires that certain assumptions be made regarding existing conditions which are concealed or otherwise not visible. Some of these assumptions may not be verifiable without significant cost or destroying otherwise adequate and serviceable portions of the structure. Where it is impractical to verify assumptions concerning hidden conditions, **RACE** assumes no responsibility for any additional costs or liabilities associated with existing conditions which deviate from that assumed.

Existing Conditions Information on the existing structures have been obtained from existing drawings, preliminary site visits, and other documents. This Agreement is based upon the assumption that the construction of the existing structures was done in strict accordance with these drawings or with common construction standards and that the existing structural elements are, unless noted herein, in sound condition and are fully permitted with all required regulatory agencies. No attempt has been made to verify the integrity of the existing structures other than what will be explicitly shown on our drawings, and we assume no responsibility for its condition if it should turn out not to be adequate. It shall be the responsibility of the contractor for the construction of the new structure to report to **RACE** immediately any



discrepancies and any evidence of impairment of structural strength found during the course of construction.

Client Provided Information **RACE** shall be entitled to generally rely on the accuracy and completeness of information and documents furnished by Client and by other consultants such as surveys, soil boring logs, geotechnical reports, and working drawings of existing structures. Any substantial inaccuracies in the quality or completeness of information provided which requires a substantial effort to change or correct our work which is based on Client provided information shall constitute a change in the Scope of Services and be subject to the provisions which pertain to *Additional Services*.

Jobsite Safety Neither the professional activities of **RACE**, nor the presence of **RACE** or its sub-consultants at a construction site, shall relieve the General Contractor and any other entity of their obligations, duties, and responsibilities including, but not limited to, construction means, methods, sequences, techniques, or procedures necessary for performing, superintending, or coordinating all portions of the work of construction in accordance with the contract documents and any health or safety precautions required by any regulatory agencies.

Time Period for Accepting Contract This Agreement is valid for a period of 30 days, after which the Consultant reserves the right to review and revise the estimated fee, time schedule, and other terms specified herein.

Alternate Dispute Resolution All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or breach thereof (except claims by **RACE** or its associates for fees and costs for professional services) will be presented to non-binding mediation, subject to the parties agreeing to a mediator(s).

Contract Signatures The individual executing this Agreement, if acting on behalf of a partnership, corporation, or funding agency, represents that he has the authority to do so.

Discovery of Unanticipated Hazardous Materials Hazardous materials or certain types of hazardous materials may exist where there is no reason to believe they could or should be present. **RACE** and the Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work. The Client and **RACE** also agree that the discovery of unanticipated hazardous materials may make it necessary for **RACE** to take immediate measures to protect human health and safety, and/or the environment. **RACE** agrees to notify the Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. The Client encourages **RACE** to take any and all measures that in **RACE**'s professional opinion are justified to preserve and protect the health and safety of **RACE**'s personnel and the public, and/or the environment, and the Client agrees to compensate **RACE** for the additional cost of such work. In addition, the Client waives any claims against **RACE** and agrees to indemnify for injury or loss arising from **RACE**'s encountering unanticipated hazardous materials or

suspected hazardous materials. The Client also agrees to compensate **RACE** for any time spent and any expenses incurred by **RACE** in defense of any such claim, with such compensation to be based upon **RACE**'s prevailing fee schedule and expense reimbursement policy.

Indemnification The Client agrees to hold harmless and indemnify **RACE** for and against all claims, damages, awards and costs of defense arising out of delays in or failures of **RACE**'s performance resulting from events beyond the control of **RACE**. The Client agrees to stipulate within the contract documents between the Contractor and the Client, that the Contractor or Client shall purchase and maintain, during the course of construction, "all-risk" builder's risk insurance in a reasonable amount of coverage which names **RACE**, the Contractor, the Client, and the Client's agents as additional insureds.

Delivery of Electronic Files In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by **RACE**, the Client agrees that all such electronic files are instruments of service of **RACE**, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights. The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer these electronic files to others without the prior written consent of **RACE**. The Client further agrees to waive all claims against **RACE** resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than **RACE**. The Client and **RACE** shall agree upon the format for any electronic files furnished by either party prior to the initiation of work. Any changes to the electronic specifications by either the Client or **RACE** are subject to review and acceptance by the other party. Additional services by **RACE** made necessary by changes to the electronic file specifications shall be compensated for as *Additional Services*. Electronic files furnished by either party shall be subject to an acceptance period of thirty (30) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by **RACE** and electronic files, the signed or sealed hard-copy construction documents shall govern. In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless **RACE**, its officers, directors, employees and sub-consultants against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than **RACE** or his designate from any reuse of the electronic files without the prior written consent of **RACE**. Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by **RACE**, and **RACE** makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no



event shall **RACE** be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files, unless those damages are a result of an error or omission which is shown on both the hard-copy documents and the electronic files.

Termination

- (1) This Agreement between the Client and **RACE** may be terminated by either party and shall be deemed effective upon receipt of seven (7) days prior written notice.
- (2) If this Agreement is terminated during the course of performance of the work, **RACE** shall be paid within seven (7) days of such termination the reasonable value of the services performed during the period prior to the effective date of termination.
- (3) If, prior to termination of this Agreement, any work by **RACE** during any phase of the work is suspended in whole or in part for more than three (3) months or abandoned after written notice from the Client, **RACE** shall be paid for such services performed prior to receipt of such notice.

5. AUTHORIZATION

We are prepared to undertake this project upon receipt of your written authorization to proceed. Please sign this Agreement and return one fully executed copy and the requested retainer fee to this office. We recommend that you retain a copy for your records. If you have any questions, please do not hesitate to contact the undersigned. We are looking forward to working with you on this project.

OFFERED BY:



(SIGNATURE)

Devin J. Santa, P.E.
President

(printed name/title)

RACE COASTAL ENGINEERING, INC.

AUTHORIZED BY:

(authorized signatory)

(Date)

(printed name/title)

Town of Fairfield

For (Client Name)



February 24, 2023

Mr. Thomas R. Bremer
Chief Administrative Officer
Sullivan Independence Hall, Second Floor
725 Old Post Road
Fairfield, CT 06824

Re: **Penfield Pavilion Remediation Support**
Town of Fairfield
323 Fairfield Beach Road, Fairfield, Connecticut

Dear Mr. Bremmer

Weston & Sampson Engineers, Inc. (Weston & Sampson) is pleased to provide the Town of Fairfield (Town) with this proposal to support remediation efforts at the Penfield Pavilion (Site) and to prepare the required closure documents. Fill used during construction at the Site is classified by the Connecticut Department of Energy and Environmental Protection (CT DEEP) as a solid waste and must be remediated in accordance with the requirements of Consent Order No. 2020002DEEP (the CO) dated October 27, 2020. Removal with offsite disposal has been selected as the remedial alternative to be implemented at this Site.

PROJECT UNDERSTANDING

Fill materials from the Aggregate Recycling Facility were used during the reconstruction of the Penfield Pavilion. Materials from that facility are known to be impacted with asbestos, polychlorinated biphenyls (PCBs), extractable total petroleum hydrocarbons (ETPH), select metals, and polynuclear aromatic hydrocarbons (PAHs) and are classified as Solid Waste by the CT DEEP. As such, remediation is required by the CO and the selected remedial option for this Site is to remove the Solid Waste fill materials and to arrange for offsite disposal. Because of the presence of PCBs review of the RAP by the United States Environmental Protection Agency (EPA) was required. A Remedial Action Plan (RAP) was prepared and submitted to EPA and CT DEEP under a previous proposal.

Weston & Sampson has completed negotiations with CT DEEP and EPA concerning the RAP and no further comments on the document will be made by either agency. As part of the response to EPA comments, the Town agreed to perform a limited soil sampling program at the Site and Weston & Sampson has completed that work as well and will prepare a summary report for submittal to the Town, EPA, and CT DEEP.

The removal actions will be performed as part of a larger overall construction project for the Penfield Pavilion. As such, the Town has requested that Weston & Sampson coordinate with the other members of the Town's Construction team. Weston & Sampson has and will continue to participate in meetings regarding the construction and has provided the RAP to the construction team. Weston & Sampson will also prepare technical specifications and contract drawings related to the environmental work only for inclusion in a bid package for the entire project. It has been assumed that the construction and environmental work at the Site will be performed in a single phase and that Weston & Sampson will prepare a single set of drawings and specifications for the entire scope of the environmental work. When bids are received, Weston & Sampson will aid the Town and the project team in the review of bids. Weston & Sampson has also prepared a remedial cost estimate for the environmental portion of the work for use by the Town in public meetings.

Weston & Sampson will provide oversight for remediation activities during construction. The remediation oversight personnel will be responsible for documenting work progress in field notes and with photographs and will collect post-excavation verification samples.

Following completion of construction at the Site, Weston & Sampson will install three groundwater monitoring wells and perform post-remediation groundwater monitoring as required by CT DEEP. Upon the completion of the groundwater monitoring, Weston & Sampson will prepare and submit a Remedial Action Report (RAR) for submittal to EPA that addresses the remediation of PCBs at the Site. Weston & Sampson will also prepare a final report for

submittal to CT DEEP that documents all of the sampling performed at the Site and demonstrates that remedial goals have been achieved. These documents will be sufficient to close out the Site as per the CO.

SCOPE OF WORK

The Scope of Work described in this proposal includes:

- Already completed regulatory negotiations with EPA and CT DEEP and the additional soil sampling negotiated with the regulatory agencies and submittal of a summary report describing the findings;
- Preparation of Bid Documents, i.e., technical specifications and contract drawings, for the environmental portion of the work and participation in construction meetings with the project team;
- Remediation oversight including collection of information required for post-remediation submittals as stated in the CO and post-excavation verification sampling; and
- Post-remediation groundwater monitoring and completion of reports to be submitted to CT DEEP and EPA.

Regulatory Negotiations and Soil Sampling

Weston & Sampson has provided response to comments from both EPA and CT DEEP. Negotiations have been completed and both CT DEEP and EPA have indicated that they will provide no additional comments. Weston & Sampson has also completed sampling in the parking lot that was requested by EPA. The data collected will be summarized in a letter report that will include a description of the sampling, boring logs and photographs of soil removed at each location, figures showing sample locations, tables summarizing the analytical data, and recommendations for future actions. PCBs were not detected in any of the samples collected and debris, indicating the possible presence of solid waste fill from the Aggregate Recycling Facility, was not noted in the soil borings. Thus, the letter report will state that no further actions are required.

Bid Documents

Weston & Sampson has generated a list of technical specifications and bid items for the remediation scope of work and this has been accepted by the Town's project team. Weston & Sampson will complete the technical specifications and contract drawings and submit to the Town's project team for review and comment. The bid documents will be finalized and submitted to the Town for inclusion in the final bid package.

Following award of the remedial contract, Weston & Sampson will collect waste profiling samples from around and beneath the building for the selected remedial contractor. The sample results will be used by the remedial contractor to complete waste profiles for the soil to be disposed.

Remediation Oversight

Weston & Sampson will provide remediation oversight for each day that removal of solid waste fill is being performed. Weston & Sampson personnel will be responsible for documenting daily activities through field logs and site photographs. Weston & Sampson personnel will also collect post-excavation verification samples. Sample results will be reviewed upon receipt and instructions provided to the remedial contractor as to 1) completion of remedial excavations in that area or 2) the need for additional excavation. If additional excavation is required, Weston & Sampson will indicate to the remedial contractor the area and depth of additional excavation work to be performed. Air monitoring, including that required for the excavation areas for asbestos, will be performed by the remedial contractor. Weston & Sampson will obtain that data from the remedial contractor for inclusion in the final RAR. The remedial contractor will also be responsible for communications with the Connecticut Department of Public Health (CT DPH) to obtain approvals required to excavate asbestos impacted soil.

Costs provided for remediation oversight assumes that Weston & Sampson personnel will be onsite for a total of fifty (50) days. Weston & Sampson will credit the Town if the number of days onsite is less than that assumed. If the remediation takes longer than anticipated, Weston & Sampson will provide the Town with a change order documenting the extra days spent onsite and the associated costs.

All verification samples will be submitted to Alpha Analytical Laboratory with a 72-hour turnaround time and all analytical data will be reported following the CT DEEP Reasonable Confidence Protocol (RCP) as required in the CO. Costs for verification sampling have been developed based upon the following sample count:

- 45 samples analyzed for total PCBs using EPA Methods 3540 and 8082;
- 80 samples analyzed for PAHs by EPA Method 8270;
- 80 samples analyzed for ETPH using the CT DEEP Method;
- 80 samples analyzed for arsenic and lead using EPA Method 6010; and
- 10 samples analyzed for asbestos using Transmission Electron Microscopy (TEM).

Weston & Sampson will document the number and type of samples collected and will credit the Town if the total number of samples collected is less than that assumed. Weston & Sampson will provide the Town with a change order documenting costs and number of samples if the number of post-excavation verification samples collected is greater than that assumed.

Reporting and Groundwater Monitoring

Following the completion of soil remediation, Weston & Sampson will prepare:

- 1) Figures showing verification sample locations;
- 2) Tables summarizing the verification sample results; and
- 3) A summary report for the PCB-related soil excavations with tables, figures, and waste manifests for submittal to EPA.

Following the completion of the construction at the Site, Weston & Sampson will install three groundwater monitoring wells. One monitoring well will be located within the parking lot and the other two will be installed in the beach, downgradient of the remedial excavations. Weston & Sampson will develop the wells one-week after installation. Weston & Sampson will sample the three monitoring wells for four quarters following development. Samples will be collected and analyzed for total PCBs by EPA Method 8082, PAHs by EPA Method 8270 using selected ion monitoring (SIM) to achieve reporting limits low enough to demonstrate compliance with applicable remedial criteria, ETPH by CT DEEP Method, arsenic and lead by EPA Method 6010, and asbestos by TEM.

Following the completion of groundwater monitoring, Weston & Sampson will prepare a table summarizing groundwater data and a figure showing monitoring well locations. The groundwater table and figure will be combined with the soil sampling data and provided to CT DEEP in a RAR for submittal to CT DEEP.

PROJECT SCHEDULE

Weston & Sampson has completed certain tasks as described above. Tasks not yet completed and the schedule to perform the work is as follows:

- The summary soil report for additional sampling requested by EPA will be completed within one week of receipt of this signed proposal.
- Weston & Sampson understands that the Town is working through a period of public communication prior to finalizing bid documents for this project. The documents have been drafted and will be finalized on a schedule agreed to between the Town and Weston & Sampson. Waste Profile soil sampling will be completed within one week of award of the project work and the data provided to the selected contractor within three weeks of award.
- Weston & Sampson will provide remediation oversight personnel on a schedule agreed to between Weston & Sampson and the remedial contractor.
- The PCB soil RAR will be provided to the Town for review and comment one month after the completion of PCB remediation. The PCB soil RAR will be submitted electronically to EPA once comments have been received and resolved. The final RAR for submittal to CT DEEP will be submitted to the Town for comment one month after the completion of groundwater monitoring. The groundwater monitoring will take approximately one year to complete following the completion of construction at the Site. The final RAR will be submitted electronically to CT DEEP once comments have been received and resolved.

PROJECT FEE

Our proposed lump sum cost for the scope of work described above is \$227,000 and a cost breakdown by task is provided in the table below.

Task	Labor	Subs/ODCs	Subtotal
Regulatory Negotiations and Soil Sampling	\$8,200	\$2,900	\$11,100
Bid Documents	\$26,620	\$5,680	\$32,300
Remediation Oversight	\$64,820	\$63,980	\$128,800
Reporting and Groundwater Monitoring	\$43,640	\$11,160	\$54,800
Totals	\$143,280	\$83,720	\$227,000

Work will be performed under the General Terms and Conditions previously agreed to between the Town and Weston & Sampson.

If you have any questions, comments, or concerns regarding this proposal, please do not hesitate to contact Malcolm Beeler via phone at 860-986-7929 or email at beelerm@wseinc.com.

Sincerely,
WESTON & SAMPSON ENGINEERS, INC.



Malcolm A. Beeler, LEP
Senior Technical Leader



John Figurelli, PG, LEP
VP, Discipline Lead

Accepted By:



Signature

CHIEF ADMINISTRATIVE OFFICER

Title

March 31, 2023

Date

WESTON & SAMPSON GENERAL TERMS AND CONDITIONS

1. It is understood that the Proposal attached hereto and dated January 28, 2020 is valid for a period of ninety (90) days. Upon the expiration of that period of time or the delay or suspension of the services, WESTON & SAMPSON reserves the right to review the proposed basis of payment and fees, to allow for changing costs as well as to adjust the period of performance to conform to work loads. References herein to WESTON & SAMPSON are understood to refer to WESTON & SAMPSON ENGINEERS, INC.
2. Invoices will be submitted periodically (customarily on a monthly basis), and terms are net cash, due and payable upon receipt of invoice. If the OWNER fails to make any payment due to WESTON & SAMPSON for services and expenses within thirty (30) days after receipt of WESTON & SAMPSON'S statement therefor, WESTON & SAMPSON may, after giving seven (7) days' written notice to the OWNER, suspend services under this Agreement. Unless payment is received by WESTON & SAMPSON within seven (7) days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, WESTON & SAMPSON shall have no responsibility to the OWNER for delay or damage caused the OWNER because of such suspension of services.
3. WESTON & SAMPSON will serve as the professional representative of the OWNER as defined by the Proposal or under any Agreement and will provide advice, consultation and services to the OWNER in accordance with generally accepted professional practice consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality, at the same site and under the same or similar circumstances and conditions. Therefore, estimates of cost, approvals, recommendations, opinions, and decisions by WESTON & SAMPSON are made on the basis of WESTON & SAMPSON'S experience, qualifications and professional judgment. Accordingly, WESTON & SAMPSON does not warrant or represent that bids or negotiated prices will not vary from the OWNER'S budget for the project, or from any estimate of the Cost of the Work evaluation prepared or agreed to by WESTON & SAMPSON. WESTON & SAMPSON makes no warranty or guarantee, express or implied, regarding the services or work to be provided under this Proposal or any related Agreement. Notwithstanding any other provision of these General Terms and Conditions, unless otherwise subject to a greater limitation, and to the fullest extent permitted by law, the total liability in the aggregate, of WESTON & SAMPSON and their officers, directors, employees, agents, and independent professional associates, and any of them, to OWNER and any one claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of in any way related to WESTON & SAMPSON's services, the project, or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of WESTON & SAMPSON or WESTON & SAMPSON's officers, directors, employees, agents or independent professional associates, or any of them, shall not exceed the greater of \$50,000 or the total compensation received by WESTON & SAMPSON hereunder and OWNER hereby releases WESTON & SAMPSON from any liability above such amount. WESTON & SAMPSON shall have no upfront duty to defend the OWNER but shall reimburse defense costs of the OWNER to the same extent of its indemnity obligation herein.
4. Where the Services include subsurface exploration, the OWNER acknowledges that the use of exploration equipment may alter or damage the terrain, vegetation, structures, improvements, or the other property at the Site and accepts the risk. Provided WESTON & SAMPSON uses reasonable care, WESTON & SAMPSON shall not be liable for such alteration or damage or for damage to or interference with any subterranean structure, pipe, tank, cable, or other element or condition whose nature and location are not called to WESTON & SAMPSON'S attention in writing before exploration begins.
5. WESTON & SAMPSON and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous waste in any form at the project site. Accordingly, the OWNER agrees to assert no claims against WESTON & SAMPSON, its principals, agents, employees and consultants, if such claim is based, in whole or in part, upon the negligence, breach of contract, breach of warranty, indemnity or other alleged obligation of WESTON & SAMPSON or its consultants, and arises out of or in connection with the detection, assessment, abatement, identification or remediation of hazardous materials, pollutants or asbestos at, in,

- under or in the vicinity of the project site identified in the Proposal. OWNER shall defend, indemnify and hold harmless WESTON & SAMPSON, its principals, agents, employees, and consultants and each of them, harmless from and against any and all costs, liability, claims, demands, damages or expenses, including reasonable attorneys' fees, with respect to any such claim or claims described in the preceding sentence, whether asserted by OWNER or any other person or entity. WESTON & SAMPSON shall not be liable for any damages or injuries of any nature whatsoever, due to any delay or suspension in the performance of its services caused by or arising out of the discovery of hazardous substances or pollutants at the project site.
6. WESTON & SAMPSON agrees to purchase at its own expense, Worker's Compensation insurance, Comprehensive General Liability insurance, and Engineer's Professional Liability insurance and will, upon request, furnish insurance certificates to OWNER reflecting WESTON & SAMPSON's standard coverage. WESTON & SAMPSON agrees to purchase whatever additional insurance is requested by OWNER (presuming such insurance is available, from carriers acceptable to WESTON & SAMPSON) provided OWNER reimburses the premiums for additional insurance.
 7. As a part of this Agreement, OWNER without cost to WESTON & SAMPSON agrees to do the following in a timely manner so as not to delay the services of WESTON & SAMPSON:
 - a. Designate in writing a person to act as OWNER'S representative with respect to work to be performed under this Agreement, such person to have complete authority to transmit instructions, receive information, interpret and define OWNER'S policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by the Agreement.
 - b. Through its officials and other employees who have knowledge of pertinent conditions, confer with WESTON & SAMPSON regarding both general and special considerations relating to the Project.
 - c. Assist WESTON & SAMPSON by placing at the disposal of WESTON & SAMPSON, all available information pertinent to the Project including previous reports and other data relative to design or construction of Project.
 - d. Furnish or cause to be furnished to WESTON & SAMPSON all documents and information known to OWNER that relate to the identity, location, quantity, nature or characteristics of any hazardous waste at, on or under the site. In addition, OWNER will furnish or cause to be furnished such other reports, data, studies, plans, specifications, documents and other information on surface and subsurface site conditions required by WESTON & SAMPSON for proper performance of its services.
 - e. WESTON & SAMPSON shall be entitled to rely, without liability, on the accuracy and completeness of information and documents provided by the OWNER, OWNER'S CONSULTANTS and CONTRACTORS and information from public records, without the need for independent verification.
 - f. Pay for all application and permit fees associated with approvals and permits for all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
 - g. Arrange for and make all provisions for WESTON & SAMPSON and its agents to enter upon public and private lands as required for WESTON & SAMPSON to perform its work under this Agreement.
 - h. Furnish WESTON & SAMPSON with all necessary topographic, property, boundary and right-of-way maps.
 - i. Cooperate with and assist WESTON & SAMPSON in all additional work that is mutually agreed upon.
 - j. Pay WESTON & SAMPSON for work performed in accordance with terms specified herein.
8. The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. If the Project is suspended or abandoned in whole or in part for more than three (3) months, WESTON & SAMPSON shall be compensated for all services performed prior to receipt of written notice from OWNER of such

- suspension or abandonment, together with the other direct costs then due. If the Project is resumed after being suspended for more than three (3) months, WESTON & SAMPSON'S compensation shall be equitably adjusted. In the event of termination by either party, WESTON & SAMPSON shall be compensated for all services performed prior to receipt of written termination, together with other direct costs then due, including WESTON & SAMPSON's independent consultants, and for the services necessary to affect termination.
9. The OWNER and WESTON & SAMPSON waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by any property or other insurance in effect whether during or after the project. The OWNER and WESTON & SAMPSON shall each require similar waivers from their contractors, consultants and agents.
10. All Drawings, diagrams, plans, specifications, calculations, reports, processes, computer processes and software, operational and design data, and all other documents and information produced in connection with the project as instruments of service, regardless of form, shall be confidential and the property of WESTON & SAMPSON, and shall remain the sole and exclusive property of WESTON & SAMPSON whether the project for which they are made is executed or not. The OWNER shall not have or acquire any title to or ownership rights in any of the documents or information prepared by WESTON & SAMPSON. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by the OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other Projects. Any reuse without written verification or adaptation by WESTON & SAMPSON for the specific purpose intended will be at OWNER'S sole risk and without liability or legal exposure to WESTON & SAMPSON or to WESTON & SAMPSON's independent consultants, and OWNER shall indemnify and hold harmless WESTON & SAMPSON and WESTON & SAMPSON's independent consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle WESTON & SAMPSON to further compensation at rates to be agreed upon by OWNER and WESTON & SAMPSON.
11. The substantive laws of the Commonwealth of Massachusetts shall govern any disputes between WESTON & SAMPSON and the OWNER arising out of the interpretation and performance of this Agreement.
12. WESTON & SAMPSON and the OWNER agree that any disputes arising under this Agreement and the performance thereof shall be subject to nonbinding mediation as a prerequisite to further legal proceedings.
13. WESTON & SAMPSON shall not be required to sign any documents, no matter by who requested, that would result in WESTON & SAMPSON having to certify, guaranty, or warrant the existence of conditions that would require knowledge, services or responsibilities beyond the scope of this Agreement.
14. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the OWNER or WESTON & SAMPSON. WESTON & SAMPSON'S services hereunder are being performed solely for the benefit of the OWNER, and no other entity shall have any claim against WESTON & SAMPSON because of this Agreement or WESTON & SAMPSON'S performance of services hereunder.
15. Notwithstanding anything to the contrary contained herein, OWNER and ENGINEER agree that their sole and exclusive claim, demand, suit, judgment or remedy against each other shall be asserted against each other's corporate entity and not against each other's shareholders, A/E's, directors, officers or employees.
16. To the extent they are inconsistent or contradictory, express terms of this Proposal take precedence over these General Terms and Condition. It is understood and agreed that the services or work performed under this Proposal or any Agreement are not subject to any provision of any Uniform Commercial Code. Any terms and conditions set forth in OWNER'S purchase order, requisition, or other notice or authorization to proceed are inapplicable to the services under this Proposal or any related Agreement, except when specifically provided for in full on the face of such purchase order, requisition, or notice or authorization and specifically accepted in writing by WESTON & SAMPSON. WESTON & SAMPSON'S acknowledgement of receipt of any

purchase order, requisition, notice or authorization, or WESTON & SAMPSON'S performance of work subsequent to receipt thereof, does not constitute acceptance of any terms or conditions other than those set forth herein.

17. If any provision of this Agreement shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

Approved by:

OWNER Name

Signature

Date

Printed Name and Title

Document2

**Compensation Recommendation Committee
for the Board of Selectmen
Committee Charge**

A Compensation Recommendation Committee for the Board of Selectmen (CRCBOS) is hereby established to review and recommend compensation for the Board of Selectmen. The CRCBOS shall report to the Board of Selectmen through the Office of the First Selectperson.

Using compensation data from CCM and other organizations, the Town Budget, and other relevant data and research reports as deemed useful, the CRCBOS shall make a comprehensive recommendation to the Board of Selectmen to determine compensation for the First Selectperson and the Selectmen for the period November 2023 through November 2027.

Members of the CRCBOS shall be appointed by the Board of Selectmen and will include one member of the majority party and one member of the minority party of the Board of Finance and one member of the majority party and one member of the minority party of the RTM for a total of 4 members. The Committee shall elect a Chairperson and a Secretary.

The Committee shall commence work immediately upon appointment by the Board of Selectmen and shall report back a recommendation to the Board of Selectmen no later than July 1, 2023.

The Committee shall cease to exist upon the submission of a recommendation to the Board of Selectmen.

REFUNDS SUBMITTED FOR APPROVAL
4/17/2023

<u>Name</u>	<u>List No.</u>	<u>Tax</u>	<u>Interest</u>	<u>DMV</u>	<u>Bill</u>	<u>Reason</u>
<u>2021 MOTOR VEHICLE</u>						
CCAP AUTO LEASE LTD	2021 03 56243	\$666.02				OVERPAID DUE TO ADJUSTMENT
DAIMLER TRUST	2021 03 59203	\$601.64				OVERPAID DUE TO ADJUSTMENT
DAIMLER TRUST	2021 03 59435	\$296.02				OVERPAID DUE TO ADJUSTMENT
HYUNDAI LEASE TITLING TRUST	2021 03 70167	\$214.24				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT LLC	2021 03 80820	\$105.80				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT LLC	2021 03 80916	\$291.58				OVERPAID DUE TO ADJUSTMENT
TOYOTA LEASE TRUST	2021 03 91312	\$691.36				OVERPAID DUE TO ADJUSTMENT
TOYOTA LEASE TRUST	2021 03 91406	\$748.84				OVERPAID DUE TO ADJUSTMENT
VW CREDIT LEASING LTD	2021 03 94543	\$118.76				OVERPAID DUE TO ADJUSTMENT
VW CREDIT LEASING LTD	2021 03 94962	\$801.32				OVERPAID DUE TO ADJUSTMENT
VW CREDIT LEASING LTD	2021 03 94970	\$157.30				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT LLC	2021 04 85305	\$127.24				OVERPAID DUE TO ADJUSTMENT
TOTAL		<u><u>\$4,820.12</u></u>				
<u>2021 SEWER USE</u>						
NOVINS PETER B & JOANNA G	2021 08 00213	\$159.42				OVERPAID IN ERROR
MARTIN ERIK & SOPATA LEIA	2021 08 02284	\$292.56				OVERPAID IN ERROR
THIRKIELD ALISON	2021 08 16416	\$5.69				OVERPAID IN ERROR
TOTAL		<u><u>\$457.67</u></u>				
<u>2020 MOTOR VEHICLE</u>						
NISSAN INFINITI LT	2020 03 79842	\$449.50				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 03 79908	\$172.54				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 03 79916	\$261.61				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 03 79965	\$254.02				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 03 80039	\$453.16				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 03 80189	\$432.64				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 03 80226	\$160.52				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 03 80247	\$348.58				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 03 80253	\$280.18				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 03 80258	\$86.26				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 03 80297	\$85.26				OVERPAID DUE TO ADJUSTMENT
VAULT TRUST	2020 03 92470	\$319.38				OVERPAID DUE TO ADJUSTMENT
NISSAN INFINITI LT	2020 04 86792	\$294.40				OVERPAID DUE TO ADJUSTMENT
TENGEL JEFFREY J	2020 04 88774	\$298.29				OVERPAID DUE TO ADJUSTMENT
TOTAL		<u><u>\$3,896.34</u></u>				
<u>2020 SEWER USE</u>						
HESSELL EDWARD T	2020 08 15609	\$85.55				OVERPAID IN ERROR
GARTON PATRICIA R	2020 08 21021	\$150.00				OVERPAID IN ERROR
TOTAL		<u><u>\$235.55</u></u>				
<u>2019 MOTOR VEHICLE</u>						
CARUSO NICHOLAS A	2019 03 56180	\$107.43				OVERPAID DUE TO ADJUSTMENT
MURPHY SARAH E	2019 03 80253	\$158.73				OVERPAID IN ERROR
		<u><u>\$266.16</u></u>				
TOTAL TAX	\$9,675.84					
TOTAL INTEREST	-					

GRAND TOTAL

\$9,675.84