



## WESTPORT CONNECTICUT BOARD OF FINANCE

### ***SPECIAL NOTICE ABOUT PROCEDURES FOR THIS ELECTRONIC MEETING:***

***Pursuant to the Governor's Executive Order No. 7B, there will not be a physical location for this meeting. This meeting will be held electronically and live streamed on [westportct.gov](http://westportct.gov) and shown on Optimum Government Access Channel 79 and Frontier Channel 6020. Emails to BOF members can be sent to [BOF@westportct.gov](mailto:BOF@westportct.gov). Comments to be read during the public comment period may be emailed to [BOFcomments@westportct.gov](mailto:BOFcomments@westportct.gov). We will use our best efforts to read public comments if they are received during the public comment period and if they state your full name and address. Meeting materials will be available at [westportct.gov](http://westportct.gov) along with the meeting notice posted on the Meeting List & Calendar page.***

### **NOTICE OF BOF PUBLIC MEETING**

The Board of Finance will hold its Public Meeting on **Wednesday, July 8, 2020 at 7:30 p.m. with remote participation** for the following purposes:

#### **AGENDA**

1. To approve the Board of Finance Minutes of the June 3, 2020 Regular Meeting.
2. Financial Report from the Finance Director. (Discussion Only)
3. Two questions previously submitted to be addressed by the Director of Parks and Recreation Administration:
  - a. What is the outlook for expenses and revenues this financial year?
  - b. What are the actions being taken to improve our parks this year and how does this relate to the Parks approved 2020 budget?
4. Coleytown Middle School Status Update from Sheri Gordon. (Discussion Only)
5. Status Update from the Audit Manager. (Discussion Only)
6. Upon the request of the Director of Public Works, to approve an appropriation of \$227,000.00 to the Sewer Reserve Fund Account #32003330-500314 for the replacement of the second Bar Screen Rack and Skylight at the Westport Water Pollution Control Facility.
7. Upon the request of the Finance Director, to approve an appropriation of \$400,000.00 from the General Fund Balance to the Special Accounts set up under COVID-19.

*It is the policy of the Town of Westport that all Town-sponsored public meetings and events are accessible to people with disabilities. If you need assistance in participating in a meeting or event due to a disability as defined under the Americans with Disabilities Act, please contact Westport's ADA Coordinator at 203-341-1043 or [efluq@westportct.gov](mailto:efluq@westportct.gov) at least three (3) business days prior to the scheduled meeting or event to request an accommodation.*



**WESTPORT CONNECTICUT  
BOARD OF FINANCE**

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**DRAFT MINUTES OF BOF PUBLIC MEETING**

The Board of Finance held its Public Meeting on Wednesday, June 3, 2020 at 7:30 p.m. with remote participation for the following purposes:

BOF meeting attendees: Brian Stern, Andrea Moore, Jay DesMarteau, Jim Foster, Lee Caney, Sheri Gordon and Nancie Dupier.

**AGENDA**

1. To approve the Board of Finance Minutes of the May 20, 2020 Regular Meeting. *Motion to approve - Brian Stern, second - Nancie Dupier. Vote 7-0-0.*
2. Financial Report from the Finance Director. (Discussion Only) - *Gary Conrad reported*
3. Coleytown Middle School Status Update from Sheri Gordon. (Discussion Only) - *Sheri Gordon reported*
4. Status Update from the Audit Manager. (Discussion Only) - *Lynn Scully reported*
5. A request by the Tax Collector pursuant to CGS § 12-165 for a transfer of \$126,686.56 to the Suspense Tax Book representing uncollected motor vehicle and personal property tax accounts. *Harry Whiteley reported. Motion to approve - Lee Caney, second - Andrea Moore. Vote 7-0-0.*

6. Upon the request of the First Selectman, to approve a transfer of \$180,000.00 to the appropriate department salary accounts from Account #10109917-519000 (Reserve Salary Adjustments) for non-bargaining employees' salary increases. *Jim Foster reported. Motion to approve - Jim Foster, second - Sheri Gordon. Vote 7-0-0.*

*Motion to Adjourn - Andrea Moore, second - Sheri Gordon. Vote 7-0-0*

*Meeting adjourned at 7:58pm.*

*Meeting notes respectfully submitted by Andrea Moore*

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## WESTPORT, CONNECTICUT

DEPARTMENT OF PUBLIC WORKS  
TOWN HALL, 110 MYRTLE AVE.  
WESTPORT, CONNECTICUT 06880  
(203) 341 1120

June 22, 2020

Mr. James S. Marpe  
First Selectman  
Town Hall  
Westport, CT 06880

Re: Appropriation from Sewer Reserve Fund  
Replacement of Bar Screen #2 at Water Pollution Control Facility

Dear Mr. Marpe,

This office herein requests an appropriation from the Sewer Reserve Fund in the amount of \$227,000 for the replacement of one Bar Screen Rack #2 at the Westport Water Pollution Control Facility. The work consists of purchasing a new screen rack, removing a skylight at the treatment plant, lifting out the old screen out of the bar screen assembly with a crane, installing the new screen rack, and replacing the skylight. This is the second of two bar screen racks to be replaced as per the 5 year capital forecast. Both the price of the bar screen unit and the installation cost have increased slightly since the first one was done in 2018.

The attached cost estimate is based on quotes from the vendor and installer along with a 5% contingency for unforeseen items encountered during construction.

Respectfully,

A handwritten signature in blue ink, appearing to read "Peter A. Ratkiewich", with a long horizontal flourish extending to the right.

Peter A. Ratkiewich, P.E  
Director of Public Works

cc: Gary Conrad, Finance Director  
G:\Pw\_off\PAR\APPRQST\WPCF\_BarScreenCON

JUSTIFICATION FOR A CAPITAL PROJECT

DEPARTMENT INFORMATION

DEPT NAME: Department of Public Works – Sewer Treatment Division Date: 6/18/2020

PROJECT NAME AND DESCRIPTION: Replacement of Bar Screen Rack #2 at Westport Pollution Control Facility, (WPCF)

IS IT LISTED IN THE 5-YR CAPITAL FORECAST? YES [X] NO [ ] Listed in FY 2018-2023 plan under FY 2019
If no, why not?
If yes, answer the following two questions:
Which FY was the project first proposed? FY 2018
Which FY was the project first planned? FY 2018

APPROXIMATE COST: \$190,000 Purchase + \$23,500 Installation \$3,000 Elect. services \$216,500 COST IN CAPITAL FORECAST: \$220,000
CONTINGENCY (5%): \$10,825 \$227,325 <-TOTAL REQUEST-> \$227,000

SOURCE OF FUNDS:
CAPITAL BOND [ ] GEN'L FUND [ ]
CNR [ ] GRANT [ ]
STATE [ ] OTHER [X]
OTHER, DESCRIBE: Sewer Reserve Fund
PAYBACK PERIOD: N/A

PROJECTED START DATE: 11/1/2020 EST. COMPLETION DATE: 1/15/2021
ESTIMATED USEFUL LIFE: 15 years

Is this project part of a larger capital project? No
This is maintenance replacement of critical equipment

Has an RFP been issued? YES [ ] NO [X] This is a sole-supplier installation. This vendor makes the bar screen separator assembly and supplies repair and replacement parts for their own equipment.
Have bids been received? YES [ ] NO [ ] Number of bids received: N/A
Was the lowest bid the winner? YES [ ] NO [ ] If not, why? N/A

**Who will benefit from the project?**

The entire population that is served by sanitary sewer. This is a critical component of the plant that must be periodically replaced to make sure it does not go out of service. There are two mechanical bar screens so that one can be replaced while the second one is working. There is also a manual bar screen for emergencies, in the event that for some reason both bar screens go down at once. This is a prudent maintenance activity

Is it a replacement?

YES  NO

If yes, describe condition of what is to be replaced: Existing 17 year old bar screen at its recommended replacement interval

Pictures attached?

YES  NO

What other approvals/reviews are necessary to begin this project?  
RTM approval of funding request

**FINANCE**

*This section to be completed by the Finance Director.*

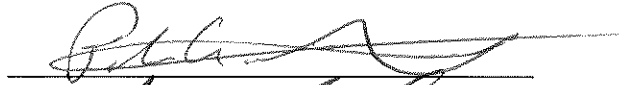
EFFECT ON TOWN FINANCES, INCLUDING DEBT SERVICE:

IF APPROVED:

IF NOT APPROVED:

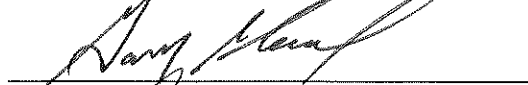
**REVIEW/SIGN-OFF**

DEPARTMENT HEAD



DATE: 6/22/2020

FINANCE DIRECTOR



DATE: 6/22/2020

FIRST SELECTMAN



DATE: 6/22/2020

Replacement of Bar Screen Rack - Opinion of Probable Cost		
item	Description	
1	New Bar Screen Rack Purchase (Sole source manufacturer quote)	\$ 190,000.00
2	Installation utilizing on call sewer service contractor, (Kovacs)	\$ 23,500.00
3	Electrical disconnect/ reconnect services (E&S)	\$ 3,000.00
		\$ 216,500.00
	5% Contingency for uncertainties in reconstruction of wiring)	\$ 10,825.00
		\$ 227,325.00
	Request	\$ 227,000.00

Peter A. Ratkiewicz, P.E.  
 Director of Public Works  
 203 341 1120





June 17, 2020

Manny Furtado  
Town of Westport  
4 Elaine Rd  
Westport, CT 06880

Sent via electronic mail

Subject: Headworks install Andritz system

Dear Manny:

Kovacs Construction Corporation is pleased to provide you with a price of \$23,500.00 to remove and replace an Andritz system that is to be furnished by the Town of Westport. Kovacs will use an existing roof opening available to utilize a crane to remove the old equipment from the building, place the old equipment on a truck, and to move in the new equipment back into the building.

The Town of Westport will provide an electrician to disconnect the old unit and connect the new unit to the existing electrical system.

We appreciate the opportunity to work with you on this project and look forward to its successful completion.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

KOVACS CONSTRUCTION CORPORATION

*Thomas R. Kovacs*

Thomas R. Kovacs  
General Manager

**GENERAL CONTRACTOR**  
321 Riggs Street, Oxford, CT 06478  
Tel: (203) 743-4022 • Fax: (203) 790-1326



# Budget Proposal

## Town of Westport, CT- Westport WPCF

### Aqua-Screen PT

Budget Proposal: 3297674-1  
Date: June 17, 2020

By: Steve Walden  
Tel: (817) 419-1768  
E-mail: [steve.walden@andritz.com](mailto:steve.walden@andritz.com)



For:  
**Town of Westport**  
**Westport W.P.C.F**  
4 Elaine Rd.  
Westport, CT 06880  
Attn: Manny Furtado  
W.P.C.F Superintendent  
Tel: 203-341-1167  
[mfurtado@westportct.gov](mailto:mfurtado@westportct.gov)

By:  
**ANDRITZ Separation Inc.**  
1010 Commercial Blvd S.  
Arlington, TX 76001, USA  
Phone: +1 817 465 5611  
Fax: +1 817 468 3961  
[www.andritz.com](http://www.andritz.com)

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<b>Bookmark not defined.</b>	

## COVER LETTER

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June 17, 2020

Town of Westport, CT  
Westport W.P.C.F.  
4 Elaine Rd  
Westport, CT 06880

Attn: Manny Furtado - W.P.C.F. Superintendent

**Re: Westport W.P.C.F**  
**Budget Proposal for Supply of Replacement Aqua-Screen™ PT 750x3600x6**

Dear Mr. Furtado,

We are pleased to submit this budget proposal of our Aqua-Screen™ PT in-channel fine screen system to replace the existing ANDRITZ screen.

We have assumed that you will reuse the control panel and screenings washer-compactor from the existing screen. Please let us know if you also want to upgrade or replace these items and we will update our proposal accordingly. On request, we can also provide pricing for a set of spare parts for the new screen. For this proposal, we have also included an upgrade to incorporate our adjustable stainless steel side seals.

We appreciate the opportunity to submit our budget proposal to the Town of Westport. Should you have any questions regarding this budget proposal or require any additional information please do not hesitate to contact me.

Your consideration is appreciated.

Sincerely,

*Steve Walden*

**Steve Walden**  
Regional Sales Manager  
ANDRITZ Separation Technologies, Inc.

## TECHNICAL INFORMATION

### SCOPE OF SUPPLY

Item	Qty.	Description
1	One (1)	<b>ANDRITZ Aqua-Screen™ PT 750x3600x6 In-Channel Screen: (Left Handed)</b> <ul style="list-style-type: none"> <li>• ANDRITZ Aqua-Screen® PT-S In-Channel Screens Model 750X3600X6</li> <li>• Sized for the application and consisting of the following components:</li> <li>• 304L SST frame of minimal 1/4 inch plate</li> <li>• 304L SST high impact plastic elements with 6 mm apertures</li> <li>• Upgraded 11 gauge 304L SS side seal</li> <li>• 75° angle of installation</li> <li>• 304L SST discharge chute</li> <li>• 304 SST link chain with 400 series SST rollers and pins</li> <li>• ¾ inch thick 304L stainless steel guide rails</li> <li>• 8620 hardened carbon steel drive shaft</li> <li>• AR400 hardened steel drive chain sprocket and lower guide</li> <li>• 1.0 hp chain drive motor</li> <li>• 1.0 hp cleaning brush drive motor</li> <li>• Adjustable polyester cleaning brush</li> <li>• 304 SST screen washing spray bar</li> </ul>
2	1 Lot	<b>Project Management, Engineering and Documentation</b> , including: <ul style="list-style-type: none"> <li>• Arrangement drawings with dimensions for the ANDRITZ scope</li> <li>• Foundation drawings showing details needed for anchoring the screens</li> <li>• Motor list</li> <li>• Installation, operating and maintenance manuals</li> <li>• Parts manual</li> </ul>
3	1 Lot	<b>Installation Checkout, Startup Assistance and Training (1 Trip / 4 Days)</b>
4	1 Lot	<b>Freight and Insurance to Jobsite, Unloading not Included</b>



**COMMERCIAL INFORMATION****PRICING SUMMARY**

Description		Qty.	Budget Price US Dollars
1	ANDRITZ Aqua-Screen PT 750x3600x6 (Left Handed)	One (1)	Included
2	Project management, engineering and documentation	1 lot	Included
3	Installation checkout, start-up assistance and training	1 lot	Included
4	Freight FOB Jobsite (Westport, CT)	1 lot	Included
<b>Total Budget Price for One (1) ANDRITZ Aqua-Screen PT 750x3600x6 US Dollars, Taxes not included, FOB Jobsite</b>			<b>\$ 190,000.00</b>

**COMMERCIAL CONDITIONS**

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**This proposal is based on the attached ANDRITZ Separation Technologies Inc. "Standard Terms and Conditions of Sale".**

**SPECIAL CONDITIONS**

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- Pricing quoted is FOB Westport, CT, unloading is not included
- Pricing does not include any local, state or federal taxes, permits or other fees. Any taxes or fees that may apply must be added to the quoted price and paid by the buyer.
- Pricing is valid for 0 days.

**TERMS OF PAYMENT**

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- 30% on order
- 70% upon delivery

**ENGINEERING**

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Following are the major engineering services included in the proposed sale price

- General arrangement drawings of proposed ANDRITZ equipment
- Specific equipment drawings, complete with piping and wiring requirements
- Operating and maintenance manuals, including recommended spare parts lists
- Motor and drive list

**DELIVERY**

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Approval drawings in 4 weeks after executed purchase order.

Equipment delivery in 16 weeks after receipt of approved submittal package.



**SCOPE NOT INCLUDED IN ANDRITZ PRICE**

(To be provided by Contractor/Client)

Specifically the ANDRITZ scope of supply does NOT include the following items as may be necessary for equipment installation & operation to the performance levels specified;

- Financing
- Equipment installation or building modifications
- Fees or taxes of any kind (sales, use, excise, Local, State, Federal, or Final Destination)
- Cranes or lifting devices
- Unloading and/or storage of equipment at jobsite
- Foundation design and engineering (ANDRITZ will furnish equipment drawings and data)
- Utilities for erection and operation (including during commissioning)
- Gauges and instrumentation not specifically identified in the above proposed scope of supply
- Any peripheral equipment not listed in this scope letter
- Interconnecting / field wiring, conduit, piping, tubing, valves, etc., between proposed equipment and existing equipment or controls
- Civil engineering, supporting platforms and ladders
- Screenings chutes (reuse existing)
- Screenings washer-compactor (reuse existing)
- Control Panel (reuse existing)
- Anchor bolts
- Spare parts



## 7.0 STANDARD TERMS AND CONDITIONS OF SALE

### ANDRITZ SEPARATION TECHNOLOGIES INC. STANDARD TERMS AND CONDITIONS OF SALE

#### 1. TERMS APPLICABLE

(a) These Terms and Conditions of Sale are the only terms which govern the sale of the products, equipment, or parts ("Products") pursuant to the quotation or acknowledgement of the Andritz entity supplying the same ("Seller") or Buyer's purchase order or other written document issued by Buyer. These Terms and Conditions of Sale control, supersede and replace any and all other additional and/or different terms and conditions of Buyer, and Seller hereby objects to and rejects all such terms and conditions of Buyer without further notification, except to the extent Seller expressly agrees to such conditions in writing. Buyer's authorization for Seller to commence work under the Agreement or Buyer's acceptance of delivery of or payment for any Products covered by this Agreement, in whole or in part, shall be deemed Buyer's acceptance of these Terms and Conditions of Sale. The term "Agreement" as used herein means (1) these Terms and Conditions of Sale, (2) Seller's quotation or acknowledgment together with any attachment thereto and any documents expressly incorporated by reference, and (3) Buyer's purchase order or other written document issued by Buyer, together with any attachment thereto and any documents expressly incorporated by reference (but excluding any Buyer terms and conditions attached thereto or incorporated therein by reference).. In the event of a conflict between any documents forming the Agreement, such documents shall be construed in the above-listed order of precedence.

(b) Prior to Buyer's acceptance of any Seller quotation in which these Terms and Conditions of Sale are incorporated, in the event that the introduction of new tariffs, levies, duties, taxes, regulation, or any type of legislation by a domestic or foreign government has the effect of increasing the price of the quoted Products, Seller reserves its right to adjust its quoted price in order to reflect these increases in cost. Nothing in this document, or any of the applicable contractual documentation shall be construed as a waiver of this right.

#### 2. DELIVERY; RISK OF LOSS AND TITLE

(a) Delivery dates are good faith estimates and do not mean that "time is of the essence." Buyer's failure to promptly make advance or interim payments, supply technical information, drawings and approvals will result in a commensurate delay in delivery. If the parties have agreed to liquidated damage in this Agreement for Seller's delay in achieving certain milestones, (i) the parties acknowledge and agree that Buyer's damages for Seller's delay are difficult to predict with any certainty, and such liquidated damages are not a penalty but a reasonable estimate of Buyer's delay damages; (ii) such liquidated damages shall not exceed an aggregate value of five percent (5%) of the Agreement price and shall be Buyer's exclusive remedy for any delay by Seller in performing any of its obligations under this Agreement; and (iii) Buyer agrees Seller shall not be liable for liquidated damages if Seller's delay in achieving a milestone subject to liquidated damages has not delayed Buyer's ability to use the applicable Products.

(b) Upon and after delivery, risk of loss or damage to the Products shall be Buyer's. Delivery of the Products hereunder will be made on the terms agreed to by the parties as set forth in this Agreement, according to INCOTERMS 2010. If no INCOTERM is agreed elsewhere in the Agreement, delivery of the Products will be made FCA. Title to the Products shall transfer to Buyer upon final payment thereof.

#### 3. WARRANTY

(a) Seller warrants to Buyer that the Products manufactured by it will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the Products and shall expire on the earlier to occur of 12 months from initial operation of the Products and 18 months from delivery thereof (the "Warranty Period"). If during the Warranty Period Buyer discovers a defect in material or workmanship of a Product and gives Seller written notice thereof within 10 days of such discovery, Seller will, at its option, either deliver to Buyer, on the same terms as the original delivery was made, according to INCOTERMS 2010, a replacement part or repair the defect in place. Any repair or replacement part furnished pursuant to this warranty are warranted against defects in material and workmanship for one period of 12 months from completion of such repair or replacement, with no further extension. Seller will have no warranty obligations for the Products under this Paragraph 3(a): (i) if the Products have not been stored, installed, operated and maintained in accordance with generally approved industry practice and with Seller's specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if Buyer fails to give Seller such written 10 day notice; (iv) if the Products are repaired by someone other than Seller or have been intentionally or accidentally damaged; (v) for corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or are considered expendable; or (vi) for expenses incurred for work in connection with the removal of the defective articles and reinstallation following repair or replacement.

(b) **THE EXPRESS WARRANTIES SELLER MAKES IN THIS PARAGRAPH 3 ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

(c) The remedies provided in Paragraph 3(a) are Buyer's exclusive remedy for breach of warranty.

(d) With respect to any Product or part thereof not manufactured by Seller, Seller shall pass on to Buyer only those warranties made to Seller by the manufacturer of such Product or part which are capable of being so passed on.

#### 4. LIMITATION OF LIABILITY

Notwithstanding any other provision in this Agreement, the following limitations of liability shall apply:

(a) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable for loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Products, loss of future contracts, claims of customers, cost of money or loss of use of capital, in each case whether or not foreseeable, or for any indirect, special, incidental or consequential damages of any nature resulting from, arising out of or connected with the Products or this Agreement or from the performance or breach hereof.

(b) The aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with the Products or this Agreement or from the performance or breach hereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed the Agreement price. The foregoing notwithstanding, Seller's aggregate and sole liability for any claims for (a) delay in delivery shall not exceed 5% and (b) failure to achieve performance requirements, shall not exceed 15% of the contract price.

(c) The limitations and exclusions of liability set forth in this Paragraph 4 shall take precedence over any other provision of this Agreement and shall apply whether the claim of liability is based on contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise. The remedies provided in this Agreement are Buyer's exclusive remedies.

(d) All liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, resulting from, arising out of or connected with the Products or this Agreement or from the performance or breach hereof shall terminate on the third anniversary of the date of this Agreement.

(e) In no event shall Seller be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of goods serviced (unless such discovery or repair is normally

discoverable by tests expressly specified in the scope of work under this Agreement) or caused by the use of goods by the Buyer against the advice of Seller. If Seller furnishes Buyer with advice or assistance concerning any products or systems that is not required pursuant to this Agreement, the furnishing of such advice or assistance will not subject Seller to any liability whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

#### 5. CHANGES, DELETIONS AND EXTRA WORK.

Seller will not be required to make changes in the Products unless Buyer and Seller have executed a written Change Order for such change. Any such Change Order will include an appropriate adjustment to the Agreement price and/or schedule. If the change impairs Seller's ability to satisfy any of its obligations to Buyer, the Change Order will include appropriate modifications to this Agreement. Seller shall be entitled to a Change Order adjusting the Agreement price, schedule and/or any affected obligations of Seller if after the effective date of this Agreement (a) a change in applicable law, tariffs, levies, duties, taxes, regulations or ordinances or (b) any act or omission of Buyer or any other party for whom Buyer is responsible, or any error or change in Buyer-provided information should require a change in the Products or cause an increase in the cost or change in the schedule to supply the Products.

#### 6. TAXES

Seller's prices do not include any sales, use, excise or other taxes. In addition to the price specified herein, the amount of any present or future sales, use, excise or other tax applicable to the sale or use of the Products shall be billed to and paid by Buyer unless Buyer provides to Seller a tax-exemption certificate acceptable to the relevant taxing authorities.

#### 7. SECURITY INTEREST

Seller shall retain a purchase money security interest and Buyer hereby grants Seller a lien upon and security interest in the Products until all payments hereunder have been made in full. Buyer acknowledges that Seller may file a financing statement or comparable document as required by applicable law and may take all other action it deems reasonably necessary to perfect and maintain such security interest in Seller and to protect Seller's interest in the Products.

#### 8. SET OFF

Neither Buyer nor any of its affiliates shall have any right to set off claims against Seller or any of its affiliates for amounts owed under this Agreement or otherwise.

#### 9. PATENTS

Unless the Products or any part thereof are designed to Buyer's specifications or instructions and provided the Product or any part thereof is not used in any manner other than as specified or approved by Seller in writing or modified by Buyer without the written consent of Seller, (i) Seller shall defend against claims made in a suit or proceeding brought against Buyer by an unaffiliated third party that any Product infringes a device claim of a patent issued as of the effective date of this Agreement in the country in which the Product will be operated, and limited to the field of the specific Products provided under this Agreement; provided Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense of such claims; (ii) Seller shall satisfy any judgment (after all appeals) for damages entered against Buyer on such claims so long as such damages are not attributable to willful conduct or sanctioned litigation conduct; and (iii) if such judgment enjoins Buyer from using any Product or a part thereof, then Seller will, at its option: (a) obtain for Buyer the right to continue using such Product or part; (b) eliminate the infringement by replacing or modifying all or part of the Products; or (c) take back such Product or part and refund to Buyer all payments on the Agreement price that Seller has received for such Product or part. The foregoing states Seller's entire liability for patent infringement by any Product or part thereof.

#### 10. SOFTWARE LICENSE, WARRANTY, FEES

If Buyer and Seller have not entered into a separate license agreement, the following Software Terms and Conditions apply to any embedded software produced by Seller and furnished by Seller hereunder:

(a) The Software, as described in the Agreement ("Software"), and all written materials or graphic files that are fixed in any tangible medium and that relate to and support the Software ("Documentation"), and all present and future worldwide copyrights, trademarks, trade secrets, patents, patent applications, mask work rights, moral rights, contract rights, and other proprietary rights recognized by the laws of any country inherent therein, including all changes and improvements requested or suggested by Buyer in the support and maintenance of the Software are the exclusive property of Seller ("Seller's Intellectual Property Rights"). All rights in and to the Software not expressly granted to Buyer in the Agreement are reserved by Seller. Nothing in this Agreement will be deemed to grant, by implication, estoppel, or otherwise, a license under any of Seller's existing or future patents. Software will not include any upgrades, new versions, releases, enhancements, or updates to the Software, unless agreed to by Seller in writing and at its sole discretion. To the extent any upgrades, new versions, releases, enhancements, or updates to the Software are provided by Seller, the term "Software" shall be deemed to include such upgrades, new versions or releases, enhancements or updates. To the extent any ownership right arises in Buyer with respect to the above, Buyer hereby assigns all of its right, title, and interest in and to any intellectual property embodied in in the Seller's Intellectual Property Rights, including enforcement rights, to Seller without the payment of any additional consideration thereof either to Buyer, or its employees, agents, or customers and agrees to execute any documents Seller deems necessary to effect such assignment.

(b) Seller hereby grants to Buyer a non-exclusive, non-transferable, non-sub-licensable, revocable license to install, run, and use the Software, and any modifications made by Seller thereto only in connection with configuration of the Products and operating system for which the Software is ordered hereunder, and for the end-use purpose stated in the Documentation. Buyer agrees that neither it nor any third party shall modify, reverse engineer, decompile or reproduce the Software, except Buyer may create a single copy for backup or archival purposes in accordance with the Documentation (the "Copy"). Buyer's license to use the Software and the Copy of such Software shall terminate upon any breach of this Agreement by Buyer. All copies of the Software, including the Copy, are the property of Seller, and all copies for which the license is terminated shall be returned to Seller, or deleted from Buyer's computer systems, with written confirmation after termination.

(c) Seller warrants that, on the date of shipment of the Software or the Products containing the Software to Buyer: (1) the Software media contain a true and correct copy of the Software and are free from material defects; (2) Seller has the right to grant the license hereunder; and (3) the Software will function substantially in accordance with the related Seller operating documentation. In no event does Seller warrant that the Software is error free or that Buyer will be able to operate the Software without impairments or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Seller does not warrant that the Software or any equipment, system, or network on which the Software is used will be free of vulnerability to intrusion or attack.

(d) If within 12 months from the date of delivery of the Products containing the Software, Buyer discovers that the Software is not as warranted above and notifies Seller in writing prior to the end of such 12 month period, and if Seller determines that it cannot or will not correct the nonconformity, Buyer's and Buyer's Seller-authorized transferee's exclusive remedies, at Seller's option, are: (1) replacement of the nonconforming Software; or (2) termination of this license and a refund of a pro rata share of the Agreement price or license fee paid.

(e) If any infringement claims are made against Buyer arising out of Buyer's use of the Software in a manner specified by Seller, Seller shall: (i) defend against any claim in a suit or proceeding brought by an unaffiliated third



party against Buyer that the Software violates a registered copyright or a confidentiality agreement to which Seller was a party, provided that Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense and settlement of such claims (including the sole authority to select counsel and remove the Software or stop accused infringing usage); (ii) Seller shall satisfy a final judgment (after all appeals) for damages entered against Buyer for such claims, so long as such damages are not attributable to willful conduct or sanctioned litigation conduct; and (iii) if such judgment enjoins Buyer from using the Software, Seller may at its option: (a) obtain for Buyer the right to continue using such Software; (b) eliminate the infringement by modifying the Software or replacing it with a functional equivalent (in which case, Buyer shall immediately stop use of the allegedly infringing Software), or (c) take back such Software and refund to Buyer all payments on the Agreement price that Seller has received. However, Seller's obligations under this Paragraph 10 shall not apply to the extent that the claim or adverse final judgment relates to: (1) Buyer's running of the Software after being notified to discontinue; (2) non-Seller software, products, data or processes; (3) Buyer's alteration of the Software; (4) Buyer's distribution of the Software to, or its use for the benefit of, any third party not approved in writing by Seller; or (5) Buyer's acquisition of confidential information (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a third party who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the confidential information. Buyer will reimburse Seller for any costs or damages that result from actions 1 to 5. **THE FOREGOING PROVISIONS OF THIS SECTION 10(a) STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF SELLER AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY VIOLATION OR INFRINGEMENT OF ANY PROPRIETARY RIGHTS UNDER SECTION 10, INCLUDING BUT NOT LIMITED TO PATENTS AND COPYRIGHTS, BY THE SOFTWARE OR ANY PART THEREOF.**

(f) This warranty set forth in subparagraph (c) above shall only apply when: (1) the Software is not modified by anyone other than Seller or its agents authorized in writing; (2) there is no modification in the Products in which the Software is installed by anyone other than Seller or its agents authorized in writing; (3) the Products are in good operating order and installed in a suitable operating environment; (4) the nonconformity is not caused by Buyer or a third party; (5) Buyer promptly notifies Seller in writing, within the period of time set forth in subparagraph (c) above, of the nonconformity; and (6) all fees for the Software due to Seller have been timely paid. **SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.**

(g) Buyer and its successors are limited to the remedies specified in this Paragraph 10.

(h) Any subsequent modifications or enhancements to the Software made by Seller are, at Seller's option, subject to a fee.

#### 11. TERMINATION

(a) Buyer may terminate this Agreement upon breach by Seller of a material obligation hereunder and Seller's failure to cure, or to commence a cure of, such breach within a reasonable period of time (but not less than 30 days) following written receipt of notice of the same from Buyer.

(b) Buyer may only terminate this Agreement for Buyer's convenience upon written notice to Seller and upon payment to Seller of Seller's termination charges, which shall be specified to Buyer and shall take into account among other things expenses (direct and indirect) incurred and commitments already made by Seller, overhead, and an appropriate profit. In case of such termination, the licenses granted in Paragraphs 10 and 12 hereof shall terminate.

(c) Seller shall have the right to suspend and/or terminate its obligations under this Agreement if payment is not received within 30 days of due date. In the event of the bankruptcy or insolvency of Buyer or in the event of any bankruptcy or insolvency proceeding brought by or against Buyer, Seller shall be entitled to terminate any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges.

#### 12. INTELLECTUAL PROPERTY; CONFIDENTIALITY

(a) All intellectual property embodied in the Products and Software provided to Buyer is the property of Seller, and any intellectual property developed, at least in part, by Seller under this Agreement is and remains the sole and exclusive property of Seller.

(b) Buyer acknowledges that the information that Seller submits to Buyer in connection with this Agreement and the performance hereof is Seller's confidential and proprietary information. Buyer agrees not to disclose such information to third parties without Seller's prior written consent. Seller grants to Buyer a non-exclusive, royalty-free, non-transferrable license to use Seller's confidential and proprietary information for the purpose of the installation, operation, maintenance and repair of the Products that are the subject of this Agreement only; provided, however, that Buyer further agrees not to, and not to permit any third party to, analyze, measure the properties of, or otherwise reverse engineer the Products or any parts thereof, fabricate the Products or any parts thereof from Seller's drawings or to use the drawings other than in connection with this Agreement. Buyer will defend and indemnify Seller from any claim, suit or liability based on personal injury (including death) or property damage related to any Product or part thereof which is fabricated by a third party without Seller's prior written consent and from and against related costs, charges and expenses (including attorneys' fees). All copies of Seller's confidential and proprietary information shall remain Seller's property and may be reclaimed by Seller at any time in the event Buyer is in breach of its obligations under this Paragraph 12, or in case of Buyer's termination pursuant to Paragraph 11(b).

#### 13. END USER

If Buyer is not the end user of the Products sold hereunder (the "End User"), then Buyer will use its best efforts to obtain the End User's written consent to be bound to Seller by the provisions hereof. If Buyer does not obtain such End User's consent, Buyer shall defend and indemnify Seller and Seller's agents, employees, subcontractors and suppliers from any action, liability, cost, loss, or expense for which Seller would not have been liable or from which Seller would have been indemnified if Buyer had obtained such End User's consent.

#### 14. FORCE MAJEURE

(a) **Force Majeure Defined.** For the purpose of this Agreement "Force Majeure" will mean all events, whether or not foreseeable, beyond the reasonable control of either party which affect the performance of this Agreement, including, without limitation, acts of God, acts or advisories of governmental or quasi-governmental authorities, laws or regulations, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, insurrections, riots, epidemics, pandemics, outbreaks of infectious disease or other threats to public health, lightning, earthquakes, fires, storms, severe weather, floods, sabotage, delays in transportation, rejection of main forgings and castings, lack of available shipping by land, sea or air, lack of dock lighterage or loading or unloading facilities, inability to obtain labor or materials from usual sources, serious accidents involving the work of suppliers or sub-suppliers, thefts and explosions.

(b) **Suspension of Obligations.** If either Buyer or Seller is unable to carry out its obligations under this Agreement due to Force Majeure, other than the obligation to make payments due hereunder, and the party affected promptly notifies the other of such delay, then all obligations that are affected by Force Majeure will be suspended or reduced for the period of Force Majeure and for such additional time as is required to resume the performance of its obligations, and the delivery schedule will be adjusted to account for the delay.

(c) **Option to Terminate.** If the period of suspension or reduction of operations will extend for more than four (4) consecutive months or periods of suspension or reduction total more than 6 months in any 12 month period, then either Buyer or Seller may terminate this Agreement.

#### 15. INDEMNIFICATION AND INSURANCE

(a) **Indemnification.** Seller agrees to defend and indemnify Buyer from and against any third-party claim for bodily injury or damage to tangible property ("Loss") arising in connection with the Products provided by Seller hereunder, but only to the extent such Loss has been caused by the negligence, willful misconduct or other legal fault ("Fault") of Seller. Buyer shall promptly tender the defense of any such third-party claim to Seller. Seller shall be entitled to control the defense and resolution of such claim, provided that Buyer shall be entitled to be represented in the matter by counsel of its choosing at Buyer's sole expense. Where such Loss results from the Fault of both Seller and Buyer or a third party, then Seller's defense and indemnity obligation shall be limited to the proportion of the Loss that Seller's Fault bears to the total Fault.

(b) **Insurance.** Seller shall maintain commercial general liability insurance with limits of \$2,000,000 per occurrence and in the aggregate covering claims for bodily injury (including death) and physical property damage arising out of the Products. Seller shall also provide workers' compensation insurance or the like as required by the laws of the jurisdiction where the Services will be performed, and owned and non-owned auto liability insurance with limits of \$1,000,000 combined single limit. Seller will provide a Certificate of Insurance certifying the existence of such coverages upon request.



# WESTPORT CONNECTICUT

## FINANCE DEPARTMENT

110 MYRTLE AVENUE - ROOM 313  
WESTPORT, CONNECTICUT 06880

Approved for submission

To Board of Finance (06/23/20) 23, 2020

To: Honorable James S. Marpe

From: Gary G. Conrad

  
James S. Marpe  
First Selectman

I am requesting your approval for an appropriation of \$400,000 from the General Fund Balance for COVID-19 related expenses. Because of the pandemic, the Town was required to take extraordinary measures to protect its employees and constituents on many fronts. These include protective devices, sanitizing, legal fees, signage, IT expenditures for equipment and software for remote meetings, public information costs and costs related to the Tax Deferral program as required by the Governors Executive order #7 as well as legal fees as they related to the Federal Government's CARES act.

Funds were expended and will continue as this pandemic continues. We will file with FEMA and expect 75% reimbursement on qualified expenditures as well as the possible 25% from the State under a Federal grant program. Reimbursements will be put back into the General Fund Balance.

Since this was an emergency such as we have never encountered, the request for an appropriation is after much of the expenses were incurred.

The request to the Board of Finance will read:

A request by the Finance Director for an appropriation totaling \$400,000, from the General Fund Balance to Special Accounts setup under COVID-19 Account (10101980-511000).

Regards,



Gary G. Conrad  
Finance Director