

Evans, Adam	5/11/2020	560.00	3.50	560.00	3.50	560.00			Rolled joist repair design and detailing
Evans, Adam	5/12/2020	960.00	6.00	960.00	6.00	960.00			Rolled joist repair design and detailing
Evans, Adam	5/14/2020	480.00	3.00	480.00	3.00	480.00			Rolled joist repair design and detailing
Evans, Adam	5/18/2020	800.00	5.00	800.00	5.00	800.00			Rolled joist design and detailing final revisions
Fagan, David	4/22/2020	80.00	.50	80.00	.50	80.00			Discussion of soffit LGMP design
Fagan, David	4/29/2020	80.00	.50	80.00	.50	80.00			Soffit framing design
Fagan, David	5/5/2020	640.00	4.00	640.00	4.00	640.00			Soffit framing design. Correspondence with Clark-Dietrich
Fagan, David	5/6/2020	800.00	5.00	800.00	5.00	800.00			Soffit framing design
Fagan, David	5/7/2020	320.00	2.00	320.00	2.00	320.00			Site visit to inspect joist end conditions and perform drone progress flights
Fagan, David	5/8/2020	640.00	4.00	640.00	4.00	640.00			Soffit framing design. AutoCAD drawing for SK sheets
Fagan, David	5/10/2020	320.00	2.00	320.00	2.00	320.00			AutoCAD drawing for soffit framing SK sheets
Fagan, David	5/14/2020	800.00	5.00	800.00	5.00	800.00			Soffit framing SK drawings and weekly drone progress flights
Fagan, David	5/15/2020	480.00	3.00	480.00	3.00	480.00			Soffit framing SK drawings
Fagan, David	5/26/2020	480.00	3.00	480.00	3.00	480.00			
Lynch, Janet	4/2/2020	117.50	.50	117.50	.50	117.50			Tel. TMA and HER regarding spandrel beam bearing in CMU wall
Lynch, Janet	4/9/2020	117.50	.50	117.50	.50	117.50			discuss CMU wing walls with HER and TMA
Lynch, Janet	4/10/2020	117.50	.50	117.50	.50	117.50			discuss CMU wing walls with HER and TMA

Lynch, Jaret	4/14/2020	295.75	1.25	295.75	1.25	review drawings for spandrel beam bearing. CMU wing wall rebuild
Lynch, Jaret	4/15/2020	117.50	.50	117.50	.50	review drawings for spandrel beam bearing. CMU wing wall. rebuild
Lynch, Jaret	6/2/2020	117.50	.50	117.50	.50	tele. from JEC and HER regarding folded roof analysis
Lynch, Jaret	6/5/2020	117.50	.50	117.50	.50	tele. call from Matt D. regarding CMU wall to roof connections
Paulson, Conrad	4/9/2020	362.50	1.25	362.50	1.25	discuss curved roof diaphragm analysis; also steel beams bearing onto CMU wall; follow-up
Rakowski, Hannah	2/27/2020	740.00	4.00	740.00	4.00	Onsite to review sunshade anchorage probes and rolled joist.
Rakowski, Hannah	3/4/2020	92.50	.50	92.50	.50	Review of sunshade anchorage calculations.
Rakowski, Hannah	3/9/2020	231.25	1.25	231.25	1.25	Sunshade anchorage discussion with Tim Ariosto and Dziugas Reneckis
Rakowski, Hannah	3/13/2020	1,110.00	6.00	1,110.00	6.00	Calculation of sunshade loading per discussion with Dziugas and creation of SAP model for sunshade.
Rakowski, Hannah	3/16/2020	92.50	.50	92.50	.50	Worked on sunshade anchorage
Rakowski, Hannah	3/18/2020	185.00	1.00	185.00	1.00	Worked on sunshade anchorage
Rakowski, Hannah	3/19/2020	370.00	2.00	370.00	2.00	Worked on sunshade anchorage. Discussed with Dziugas.
Rakowski, Hannah	3/20/2020	740.00	4.00	740.00	4.00	Worked on sunshade anchorage
Rakowski, Hannah	3/22/2020	740.00	4.00	740.00	4.00	Worked on sunshade analysis to discuss in meeting with Dziugas
Rakowski, Hannah	3/23/2020	925.00	5.00	925.00	5.00	Conference call with Dziugas and Tim to discuss sunshade anchorage. Worked with Tim to put together schematic details for discussion with Joe and Sarah.
Rakowski, Hannah	3/24/2020	185.00	1.00	185.00	1.00	Discussed sunshade attachments with Tim Ariosto.
Rakowski, Hannah	3/27/2020	185.00	1.00	185.00	1.00	

Rakowski, Hannah	3/5/2020	92.50	50	92.50	50	Preparation and game plan of site visit.
Rakowski, Hannah	4/2/2020	231.25	1.25	231.25	1.25	Discussed solutions to RFIs with Tim Ariosto. Reviewed conditions at Gridline 3F with Jaret.
Rakowski, Hannah	4/3/2020	925.00	5.00	925.00	5.00	Entered items into SYR. Discussed open structural RFIs with Tim. Worked on analysis and design of new column at Gridline 3F.
Rakowski, Hannah	4/5/2020	647.50	3.50	647.50	3.50	Worked on analysis and design of new column at Gridline 3F.
Rakowski, Hannah	4/6/2020	92.50	.50	92.50	.50	Discussing RFI calculations with Philly office.
Rakowski, Hannah	4/7/2020	92.50	.50	92.50	.50	Reviewed Tim's comments on calculations for Gridline 3F.
Rakowski, Hannah	4/8/2020	416.25	2.25	416.25	2.25	Discussed Gridline 3F with Tim Ariosto.
Rakowski, Hannah	4/9/2020	1,850.00	10.00	1,850.00	10.00	Working on Gridline 3F analysis. Discussed Gridline 3F on various conference calls with Tim Ariosto, Matt DeSimone, Jaret Lynch, Conrad Paulson, Joseph Bukovec.
Rakowski, Hannah	4/10/2020	740.00	4.00	740.00	4.00	Discussed Gridline 3F with Tim Ariosto, Joseph Bukovec, and Sarah Sinusas. Also discussed design approach with Jaret Lynch. Discussed joist bearing conditions with Philly office. Drafted budget/hours for structural work during CA.
Rakowski, Hannah	4/13/2020	555.00	3.00	555.00	3.00	Worked on drafting repairs for Gridline 3F.
Rakowski, Hannah	4/14/2020	1,202.50	6.50	1,202.50	6.50	Drafted repair details for Gridline 3F. Discussed repairs with Tim Ariosto.
Rakowski, Hannah	4/15/2020	740.00	4.00	740.00	4.00	Completed review comments for Gridline 3F. Discussed connection details with Adam Evans.
Rakowski, Hannah	4/16/2020	462.50	2.50	462.50	2.50	Discussion of project with Tim Ariosto. Discussion connection details with Adam Evans.
Rakowski, Hannah	4/17/2020	1,017.50	5.50	1,017.50	5.50	Design of sunshade anchorage.
Rakowski, Hannah	4/18/2020	370.00	2.00	370.00	2.00	Continued to work on sunshade analysis. Assisted Tim with questions/discussions of curtain wall calculation review.
Rakowski, Hannah	4/21/2020	185.00	1.00	185.00	1.00	Phone call with Tim to discuss project and work on sunshade connection design.
Rakowski, Hannah	4/22/2020	852.50	4.50	852.50	4.50	Worked on sunshade calculations and discussed rolled joist with Adam Evans.

Rakowski, Hannah	4/23/2020	92.50	.50	92.50	.50	Continued to work on sunshade calculation packet
Rakowski, Hannah	4/24/2020	555.00	3.00	555.00	3.00	Continued to work on sunshade calculation packet
Rakowski, Hannah	4/26/2020	832.50	4.50	832.50	4.50	Continued to work on sunshade calculation packet
Rakowski, Hannah	4/29/2020	462.50	2.50	462.50	2.50	Phone call with Adam Evans to discuss rolled joist. Phone call with Joseph Bukovec and Tim Ariosto to discuss open items on project. Performed initial review of welder certs submittal.
Rakowski, Hannah	5/1/2020	92.50	.50	92.50	.50	Discussed open structural items with Tim Ariosto and Joseph Bukovec. Discussed progress of conditions at CMU walls for the damage frame.
Rakowski, Hannah	5/2/2020	462.50	2.50	462.50	2.50	Completed sunshade calculation and prepared to distribute to Matt DeSimone for review.
Rakowski, Hannah	5/4/2020	462.50	2.50	462.50	2.50	Discussed structural work with Tim, sent Matt DeSimone sunshade calculations. reviewed PCO #43 and group specification, discussed connections with Tim and Philly office
Rakowski, Hannah	5/6/2020	185.00	1.00	185.00	1.00	Discussed the summary of Tim's site visit with Tim. Reviewed structural items that require attention.
Rakowski, Hannah	5/10/2020	555.00	3.00	555.00	3.00	Started diaphragm analysis.
Rakowski, Hannah	5/11/2020	462.50	2.50	462.50	2.50	Work on roof diaphragm analysis. Phone call to discuss project with Tim and Joe. Phone call with John Cocea to discuss roof diaphragm analysis.
Rakowski, Hannah	5/12/2020	786.25	4.25	786.25	4.25	Worked on roof diaphragm analysis - review of 1990s structural drawings. Phone call with Adam to discuss the damage framing for HP2 and Doas3.
Rakowski, Hannah	5/13/2020	555.00	3.00	555.00	3.00	Worked on roof diaphragm analysis - review of 1990s structural drawings and calculation of MWFRS loads.
Rakowski, Hannah	5/14/2020	370.00	2.00	370.00	2.00	Continued to work on roof diaphragm analysis. Discussed connections and approach with John Cocea.
Rakowski, Hannah	5/15/2020	508.75	2.75	508.75	2.75	Continued to work on roof diaphragm analysis - review of existing connections.
Rakowski, Hannah	5/18/2020	92.50	.50	92.50	.50	Phone call with Tim to discuss project.
Rakowski, Hannah	5/19/2020	370.00	2.00	370.00	2.00	IEBC roof diaphragm analysis. Discussed various open structural items with Tim.
Rakowski, Hannah	5/20/2020	462.50	2.50	462.50	2.50	IEBC roof diaphragm analysis.

Rakowski, Hannah	5/22/2020	323.75	1.75	323.75	1.75	Phone call with Tim to discuss sunshade calculations. Started revisions to sunshade anchorage sketches.
Rakowski, Hannah	5/24/2020	277.50	1.50	277.50	1.50	Modifications to sunshade calculations per Matt DeSimone's review.
Rakowski, Hannah	5/28/2020	185.00	1.00	185.00	1.00	Worked on sunshade calculations for Rotunda.
Rakowski, Hannah	5/29/2020	1,017.50	5.50	1,017.50	5.50	Phone call with Matt DeSimone to discuss questions about sunshade calculations. Modifications to analysis and drawings per Matt DeSimone's comments. Discussed progress and questions with Tim and Joe.
Rakowski, Hannah	5/31/2020	370.00	2.00	370.00	2.00	Modifications to sunshade calculations per Matt DeSimone's comments.
Rakowski, Hannah	6/1/2020	323.75	1.75	323.75	1.75	Discussed sunshade analysis with Matt DeSimone and Daugas. Phone call with John Cocca to discuss diaphragm analysis.
Rakowski, Hannah	6/2/2020	1,526.25	8.25	1,526.25	8.25	Finished modifications to sunshade analysis and sent to Matt DeSimone for review. Discussed roof diaphragm analysis with John Cocca, Jaret Lynch, and Joe Bukovec. Coordinated analysis efforts with Matt DeSimone and Adam Evans for roof diaphragm analysis. Put documents and photos together to help Matt and Adam understand the project as much as possible.
Rakowski, Hannah	6/5/2020	370.00	2.00	370.00	2.00	Discussed information necessary for roof diaphragm analysis with Matt DeSimone and Adam Evans. Put together connection probe document for Tim's and my site visit on 6/5.
Rakowski, Hannah	6/9/2020	1,110.00	6.00	1,110.00	6.00	Site visit to review existing conditions throughout 1960s structure for roof diaphragm analysis.
Rakowski, Hannah	6/11/2020	92.50	.50	92.50	.50	Reviewed contractor's drawings for modifications to damage framing at curved portion of building. Discussed roof diaphragm analysis with Matt D. and Adam E.
Rakowski, Hannah	6/14/2020	185.00	1.00	185.00	1.00	Started to modify SAP damage models to reflect G. Donovan's proposed framing plans to combine DOAS 3 with HP2 and DOAS 2 with HP 1.
Reneckis, Daugas	3/9/2020	352.50	1.50	352.50	1.50	Call with Hannah and Tim; CMU review and sunshade support concepts
Reneckis, Daugas	3/17/2020	352.50	1.50	352.50	1.50	Call with Tim and Hannah; calculation and detailing review
Reneckis, Daugas	3/23/2020	235.00	1.00	235.00	1.00	Call with Tim and Hannah; detail review
Reneckis, Daugas	3/24/2020	117.50	.50	117.50	.50	SK review and coord with Tim
Reneckis, Daugas	5/1/2020	235.00	1.00	235.00	1.00	Curtain wall base detail repair review with Tim; options for retrofit

Reneckis, Dziugas	5/5/2020	352.50	1.50	352.50	1.50	Facade base support repair SK review, markups and call with Tim
Reneckis, Dziugas	6/1/2020	117.50	.50	117.50	.50	Call with Hannah, sunshade design review and guidance
Reneckis, Dziugas	6/2/2020	117.50	.50	117.50	.50	Call with Tim, CMU pier review and design check recommendations
Reneckis, Dziugas	6/5/2020	470.00	2.00	470.00	2.00	Diaphragm analysis review with Matt D; call with Jaret et al to review results
Sinusas, Sarah	5/18/2020	820.00	4.00	820.00	4.00	Mark-up rolled joist sketch; Site visit report
Sinusas, Sarah	5/19/2020	768.75	3.75	768.75	3.75	Retaining wall area SK, Rolled joist sketch, call w Lockheed
Sinusas, Sarah	6/10/2020	973.75	4.75	973.75	4.75	Radius wall sketch, submittals, SK-67, Owners meeting
Sinusas, Sarah	6/12/2020	205.00	1.00	205.00	1.00	SK-67; calls with Zach and Susan
Zarman, Samuel	4/6/2020	160.00	1.00	160.00	1.00	Connecton Detailing Conference Call

Sum of Additional Engineering Services: \$ 62,220.00

4. To take such action as the meeting may determine, upon the request of the Finance Director, to approve the Agreement between the Town of Westport and Marsh & McLennan Agency, LLC to provide consulting services.



**MARSH & McLENNAN  
AGENCY**

Marsh & McLennan Agency LLC  
800 Connecticut Avenue, Suite 4E03  
Norwalk, CT 06854  
+1 203 663 0773+1 877 964 6300  
Fax +1 866 795 0330  
[www.MarshMma.com](http://www.MarshMma.com)

July 1, 2020

James S. Marpe, First Selectman  
Town of Westport and Westport BOE  
110 Myrtle Avenue  
Westport, CT 06880

**Subject:** Consulting Engagement Letter 2020-2021

Dear Mr. Marpe,

We are pleased that the Town of Westport and Westport BOE (“you”) has chosen Marsh & McLennan Agency LLC (Northeast) (“MMA” or “we”) and Martin S. Burger, CPCU, ARM to provide the following consulting services (the “Services”):

1. Review the Town’s renewal quotations and recommend terms and conditions for the CIRMA Workers Compensation policies and the CIRMA Package policy renewals of July 1, 2020.
2. Provide assistance and direction to the Town’s Safety and Health Committee as required by the Workers Compensation commission and the State of Connecticut General Statutes § 31-40v-1 through § 31-40v-11.
3. Meet with the Towns Safety and Health Committee to monitor and enhance the Loss Control Program which will include the following:
  - a. Carrying out the “Loss Control Policy Statement” from the First Selectmen and Superintendent of Schools that has been communicated to all employees that the Town and Board of Education support safe and healthful working conditions and correct procedures, consider safety an integral part of everyone’s job.
  - b. Planning regular inspections to detect unsafe acts and conditions that cause accidents.
  - c. Accident investigation and review of all accidents to find ways to prevent future occurrences.
  - d. Promotion safety with poster, booklets and contests that motivate good safety habits.
4. Monitor and review the effectiveness of the “Return to Work Program” and “Preferred Provider Program” to encourage early return to work and modified duty.
5. Review all Workers’ Compensation and Liability claims on a quarterly basis to determine the adequacy of reserves.
6. Prepare a monthly claim analysis for both Workers’ Compensation and LAP claims.
7. Provide guidance on other insurance matters as respects CIRMA Workers Compensation Policies and CIRMA Package Policy.

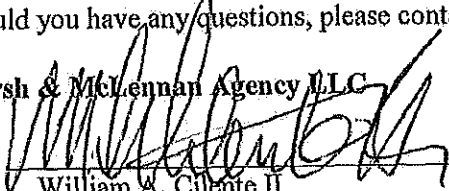


8. Provide quotations and guidance for the Excess Cyber Liability and Excess Pollution Liability over the coverage provided for CIRMA members.

MMA will provide the Services in accordance with the terms and conditions attached hereto as Exhibits A, B, and C. These terms and conditions and MMA's engagement under this letter are effective for one year starting on July 1, 2020.

In consideration for the Services, you agree to pay MMA an annual fee in the amount of \$25,000. The annual fee shall be paid by you in quarterly installments. MMA can also provide the additional services as agreed to by the parties at an additional cost. The cost and scope of additional services will be agreed in advance and reflected in an amendment to this letter or a separate letter or agreement.

We look forward to continuing a mutually rewarding and long-standing relationship with you. Should you have any questions, please contact me.

Marsh & McLennan Agency LLC  
By:   
William A. Cilente II  
Regional Executive Vice President

Date: 6/18/20

By: Martin S. Burger  
Martin S. Burger, CPCU, ARM  
Risk Management Consultant

Date: 6/18/2020

Agreed:

Town of Westport and Westport BOE

By: \_\_\_\_\_  
James S. Marpe  
First Selectman

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

Approved as to Form:

Approved as to Compliance with the  
Charter of the Town of Westport:

By: \_\_\_\_\_  
Eileen Lavigne Flug  
Assistant Town Attorney

By: \_\_\_\_\_  
Gary G. Conrad  
Finance Director

**Exhibit A**  
**Terms and Conditions**

1. **Services.** MMA shall provide the services described in the agreement to which these terms and conditions are attached (the "Services") for the fee set forth therein. It is understood and agreed that MMA's services may include advice and recommendations; however all decisions in connection with the implementation of such advice and recommendations shall be the sole responsibility of, and made by, Client. Solely with respect to the Services, this Agreement supersedes all other agreements (if any) between the Client and MMA. The Services may include modeling and/or business analytics services, including hazard loss and catastrophe modeling, loss forecasting and triangles, adverse event simulation, scenario and portfolio risk analysis, decision mapping, risk bearing and risk retention tolerance analysis ("Modeling and Analytics"). Modeling and Analytics services will be based upon a number of assumptions, conditions and factors. If any of them or any information provided to MMA are inaccurate or incomplete or should change, the Modeling and Analytics provided by MMA could be materially affected. These services are subject to inherent uncertainty, and actual results may differ materially from that projected by MMA. They are provided solely for your benefit, and do not constitute, and are not intended to be a substitute for, actuarial, accounting or legal advice. MMA shall have no liability to any third party in connection with these services or to you with regard to any services performed or provided by a third party.

2. **Confidentiality.** Client anticipates that it will disclose certain technical, financial, strategic and other proprietary and confidential information relating to its business operations and properties ("Confidential Information") to MMA for the purposes of MMA providing the Services. MMA agrees to take all reasonable steps required to keep this information confidential. Neither MMA nor any of its employees or agents directly or indirectly shall use any Confidential Information furnished by or on behalf of Client for any purpose except in furtherance of Services to be rendered by MMA pursuant to the Agreement. MMA will not disclose any Confidential Information to any third party, without Client's consent. The transmission of Confidential Information via electronic data transmission networks which provide for the security of users' data shall be permissible unless such use is contrary to Client's express instructions. As between Client and MMA, Confidential Information shall be the sole and exclusive property of Client, and, if requested by Client, all documents and records in MMA's possession containing Confidential Information shall be returned to Client; provided, however, that MMA may retain copies of documents that may contain Confidential Information which are necessary for the conduct and proper record keeping of MMA's business in accordance with standard operating procedures or applicable law.

Confidential Information shall not include any information: (a) which at the time disclosed to MMA is in the public domain; (b) which becomes part of the public domain through no fault of MMA; (c) which MMA's records demonstrate was developed independently by MMA or was received by MMA from a third party which MMA had no reason to believe had any confidentiality obligation to Client; (d) which is required to be disclosed by law, including, without limitation, pursuant to the terms of a subpoena or other similar document; provided, however, MMA shall give prior timely notice of such disclosure to Client to permit Client to seek a protective order; or (e) following the lapse of two years after disclosure of such information to MMA.

It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Section 3 and Client shall be entitled to injunctive relief as a remedy for such breach, without prejudice to any other rights or remedies available to Client under applicable law.

3. **Variation.** Where Client seeks any variation in the Services, the Client shall submit its proposal for such variation in such Services as soon as practicable to MMA. MMA shall not be obligated to accept any such variation in such Services unless the Client agrees to pay any additional sum or sums reasonably specified by MMA and to extend any period agreed for provision of such Services by any additional period reasonably specified by MMA.

4. **Independent Contractor.** During the term of this Agreement, MMA shall be an independent contractor and shall not be an employee of Client. Neither party shall have the authority to bind or commit the other party to any contract or obligation.

5. **Work Product.** All works of authorship, including but not limited to, designs, plans, specifications, programs, computer output, valuations, estimates, report, data, memoranda, findings, recommendations of every description and every innovation, conception, improvement, discovery or invention and any intellectual property rights associated therewith which are created, utilized or developed by MMA or its representatives in conjunction with this Agreement ("Work Product") is and remains the property of MMA; provided, however, that the Client shall have and is hereby granted the non-transferable right to use Work Product delivered to the Client by MMA solely

for the Client's internal risk management purposes (the "Intended Purpose"). Notwithstanding the foregoing, MMA shall acquire no rights of ownership in intellectual property rights subsisting in any material provided by Client to MMA in connection with this Agreement. Client shall not use the Work Product provided by MMA to Client for any purpose other than the Intended Purpose. Work Product and MMA's analysis, advice, findings, opinions and recommendations are solely for the information of the Client and may not be quoted in whole or in part or otherwise referred to, disclosed or delivered by the Client to any other person or entity without the prior written consent of MMA. Where Client makes any alteration or modification to any of the Work Product, all references to MMA shall be removed therefrom.

6. **Termination.** Client or MMA may terminate this Agreement upon ninety (90) days prior written notice to the other party. MMA's obligation to render Services shall terminate immediately upon termination of this Agreement for any reason. Rights and obligations accrued prior to termination shall survive termination. Without limiting the generality of the foregoing, upon termination, MMA shall be entitled to receive a prorated portion of the fee based upon Services rendered through the date of termination.

7. **Entry and Cooperation.** Client shall arrange for access to and make all provisions for MMA to enter Client's property as required by MMA to perform the Services, including arranging for work space for MMA. Client shall make available in a timely manner all documents and information deemed necessary by MMA to complete such Services. Client shall inform MMA promptly upon Client discovering that any such information or document is, or becomes, untrue, incomplete or inaccurate. In performing the Services, MMA shall, and shall be entitled to, rely upon all information and documents provided to it by or on behalf of the Client. MMA shall not be responsible for the accuracy or verification of any such information or document.

8. **Indemnity.** Clause removed per prior agreements.

9. **No Third Party Beneficiaries.** The Parties hereto mutually agree that this Agreement is intended by them to be solely for the benefit of the Parties hereto and that no third parties may rely on any reports, analysis or other material provided by MMA or shall obtain any direct or indirect benefits from the Agreement, have any claim or be entitled to any remedy under this Agreement or otherwise in any way be regarded as third party beneficiaries under this Agreement

10. **LIMITATION ON WARRANTIES.** THIS IS A SERVICES ENGAGEMENT. MMA WARRANTS THAT IT WILL PERFORM SERVICES HEREUNDER IN GOOD FAITH CONSISTENT WITH THE STANDARD OF CARE OF SIMILAR CONSULTANTS PERFORMING SIMILAR SERVICES. MMA DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED. ALL CONSULTING ACTIVITIES PERFORMED BY MMA ARE ADVISORY IN NATURE. ALL REPORTS WILL BE BASED UPON CONDITIONS OBSERVED AND INFORMATION SUPPLIED BY CLIENT. MMA DOES NOT GUARANTEE OR WARRANT THE SAFETY OF ANY CLIENT'S PROPERTIES OR OPERATIONS OR THAT CLIENT OR ANY SUCH PROPERTIES OR OPERATIONS ARE IN COMPLIANCE WITH FEDERAL, STATE OR LOCAL LAWS, CODES, STATUTES, ORDINANCES, STANDARDS OR RECOMMENDATIONS.

11. **Force Majeure.** Neither party shall be in breach of the Agreement if there is a total or partial failure by it in its duties and obligations occasioned by any act of God, fire, act of foreign, federal, state or local government, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or

other supplies, labor disputes of whatever nature, or any other reason beyond its reasonable control. In the event of delay in performance due to any such cause, the date of the delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

12. **Binding Effect; Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and their permitted assigns. No party hereto shall assign this Agreement or any interest in this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, MMA may delegate all or a portion of its duties hereunder to affiliates or subcontractors of MMA, such delegation not to relieve MMA of its obligations hereunder.

13. **Severability.** It is the intent of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Agreement or any word, phrase, clause or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified or deleted in such manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the balance of this Agreement shall not be affected thereby, the balance being construed as severable and independent.

14. **Governing Law; Venue; Jury Trial Waiver.** This Agreement shall be governed by the laws of the State of Connecticut, without regard to conflict of law principles. The state and federal courts in and for Connecticut shall be the exclusive forum for any litigation arising out of or relating to this Agreement or any alleged breach hereof, and each of the Parties hereby irrevocably consents to the jurisdiction of such courts in connection with any such litigation. Each party, on behalf of itself and its affiliates, to the fullest extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement or any services provided by MMA or its affiliates. The waiver applies to any action or legal proceeding, whether sounding in contract, tort or otherwise. Each party, on behalf of itself and its affiliates, also agrees not to include any employee, officer or director of the other party or its affiliates as a party in any such action or proceeding.

15. **Entire Agreement; Amendment; Waiver.** This Agreement represents the entire agreement between Client and MMA and supersedes all prior agreements, either written or oral, relating to the subject matter hereof. This Agreement may be amended only by written instrument signed by each of the Parties hereto. All waivers must be in writing. No waiver by any party hereto, whether express or implied, of its rights under any provisions of this Agreement shall constitute a waiver of such party's rights under such provision at any other time or a waiver of such party's rights under any other provision of this Agreement. No failure by any party hereto to take action with respect to any breach of this Agreement or default by another party hereto shall constitute a waiver of the first party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default by such other party.

**Exhibit B**  
**Additional Services**

Additional Services are available for separate compensation and shall be agreed upon in advance and addressed by amendment to this agreement or by separate agreement (in certain cases with affiliates of MMA). Such additional services include, but are not limited to:

- Actuarial analysis of Workers' Compensation, General Liability, and Automobile Liability claims, or other lines of insurance;
- Consulting relating to workers' compensation cost containment, including behavioral risk management, absence management, cumulative injury management, financial diagnostics and custom cost containment solutions;
- Business interruption and other claim valuation services offered by MMA's Forensic Accounting practice;
- Environmental risk consulting services;
- Operations and assets consulting services, including business continuity management, supply chain risk management, loss control and engineering support services and strategic risk assessments;
- Claims services other than those specified under "Services" above, including catastrophic claims support, mass tort claims support, claims management services, special claims advocacy services and archival research;
- Services in connection with loss portfolio transfers and alternative risk financing, including placements made in connection with such services;
- Captive insurance company feasibility studies;
- Establishment and administration of captive insurers;
- Placement of non-recurring insurance, including, but not limited to:
  - "one-time" placements for construction projects,
  - "one-time" placements for marine/cargo risks,
  - "one-time" placements for surety,
  - Placements for specific financial risks, such as trade credit,
  - Placements involving significant quantitative or actuarial analysis or modeling,
  - Placement of risks with financial institutions other than insurance carriers, and
  - Placements of risks not customarily accepted by insurers;
- Employee benefits services;
- Pension plan consulting;
- Compensation consulting;
- Executive deferred compensation services;
- Risk management claims information systems, including STARS and TrendTracker software programs, and related services;
- Enterprise Risk Management consulting;
- Strategic Risk Assessment;
- Provision of MMA personnel on an out-sourced basis;
- Intellectual Property Consulting;
- Security Consulting;
- Insurance-related mergers and acquisition due diligence services and transactional solutions;
- Placement and servicing of owner controlled insurance programs; and
- Interactive on-line client services.

## Exhibit C - Mandatory MMA Disclosures

Marsh & McLennan Agency LLC ("MMA") prides itself on being an industry leader in the area of transparency and compensation disclosure. We believe you should understand how we are paid for the services we are providing to you. We are committed to compensation transparency and to disclosing to you information that will assist you in evaluating potential conflicts of interest.

As a professional insurance producer, MMA and its subsidiaries facilitate the placement of insurance coverage on behalf of our clients. As an independent insurance agent, MMA may have authority to obligate an insurance company on behalf of our clients and as a result, we may be required to act within the scope of the authority granted to us under our contract with the insurer. In accordance with industry custom, we are compensated either through commissions that are calculated as a percentage of the insurance premiums charged by insurers, or fees agreed to with our clients.

MMA receives compensation through one or a combination of the following methods:

- **Retail Commissions** – A retail commission is paid to MMA by the insurer (or wholesale broker) as a percentage of the premium charged to the insured for the policy. The amount of commission may vary depending on several factors, including the type of insurance product sold and the insurer selected by the client.
- **Client Fees** – Some clients may negotiate a fee for MMA's services in lieu of, or in addition to, retail commissions paid by insurance companies. Fee agreements are in writing, typically pursuant to a Client Service Agreement, which sets forth the services to be provided by MMA, the compensation to be paid to MMA, and the terms of MMA's engagement. The fee may be collected in whole, or in part, through the crediting of retail commissions collected by MMA for the client's placements.
- **Contingent Commissions** – Many insurers agree to pay contingent commissions to insurance producers who meet set goals for all or some of the policies the insurance producers place with the insurer during the current year. The set goals may include volume, profitability, retention and/or growth thresholds. Because the amount of contingent commission earned may vary depending on factors relating to an entire book of business over the course of a year, the amount of contingent commission attributable to any given policy typically will not be known at the time of placement.
- **Supplemental Commissions** – Certain insurers and wholesalers agree to pay supplemental commissions, which are based on an insurance producer's performance during the prior year. Supplemental commissions are paid as a percentage of premium that is set at the beginning of the calendar year. This percentage remains fixed for all eligible policies written by the insurer during the ensuing year. Unlike contingent commissions, the amount of supplemental commission is known at the time of insurance placement. Like contingent commissions, they may be based on volume, profitability, retention and/or growth.
- **Wholesale Broking Commissions** – Sometimes MMA acts as a wholesale insurance broker. In these placements, MMA is engaged by a retail agent that has the direct relationship with the insured. As the wholesaler, MMA may have specialized expertise, access to surplus lines markets, or access to specialized insurance facilities that the retail agent does not have. In these transactions, the insurer typically pays a commission that is divided between the retail and wholesale broker pursuant to arrangements made between them.
- **Other Compensation** – From time to time, MMA may be compensated by insurers for providing administrative services to clients on behalf of those insurers. Such amounts are typically calculated as a percentage of premium or are based on the number of insureds. Additionally, insurers may sponsor MMA training programs and/or events.

We will be pleased to provide you additional information about our compensation and information about alternative quotes upon your request. For more detailed information about the forms of compensation we receive please refer to our Marsh & McLennan Agency Compensation Guide at <https://www.marshmma.com/resource/compensation-guide-for-client.pdf>

MMA's aggregate liability arising out of or relating to any services on your account shall not exceed ten million dollars (\$10,000,000), and in no event shall we be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits or other economic loss arising out of or relating to such services. In addition, you agree to waive your right to a jury trial in any action or legal proceeding arising out of or relating to such services. The foregoing limitation of liability and jury waiver shall apply to the fullest extent permitted by law.

Rev. July 24, 2018

5. To take such action as the meeting may determine, upon the request of the Finance Director, to approve the Agreement between the Town of Westport and Milliman, Inc. as it relates to actuarial services for the Town's pension and other post employment benefit fund including its annual plan and GASB valuations and other related services.

## ACTUARIAL SERVICES AGREEMENT

**THIS AGREEMENT** is by and between Milliman, Inc. a State of Washington Corporation with a place of business at 80 Lambertson Road, Windsor, Connecticut 06095 and the Town of Westport, a Connecticut Municipal Corporation, at 110 Myrtle Avenue, Westport, Connecticut.

**WHEREAS**, the Town of Westport (the "Town") engaged Milliman, Inc. ("Milliman") to perform actuarial services for the Town's pension and other post employment benefit fund including its annual plan and GASB valuations, and other related services as more particularly described in a Request for Proposal (#12-676T) dated November 18, 2011; and

**WHEREAS**, in 2015 the Town and Milliman extended the term of agreement through December 30, 2019; and

**WHEREAS**, the Town desires to continue to engage the services of Milliman and Milliman desires to continue to perform such services subject to the terms and conditions herein.

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I – ENGAGEMENT

The Town hereby engages Milliman to perform the scope of services described herein and Milliman hereby agrees to the engagement to perform such services in accordance with the terms and conditions of this Agreement.

### ARTICLE II – SCOPE OF SERVICES

Milliman shall perform the services set forth in the Request for Proposal for Actuarial Services, (#12-676T) dated November 18, 2011, as supplemented by Milliman's Proposal dated December 2, 2011, copies of which are attached hereto as Appendix "A" and incorporated herein by this reference (collectively, the "Proposal"). The Proposal shall not be modified except by written agreement of the parties hereto. No additional services shall be performed or billed without written authorization from the Town. Milliman shall not subcontract any work to any entity without written authorization from the Town.

### ARTICLE III – INCONSISTENCIES

All terms and conditions of the Proposal are a part of this Agreement as if fully set forth herein. To the extent there are any inconsistencies between the provisions of this Agreement and the Proposal, the provision imposing the greater obligation on Milliman shall prevail.



#### **ARTICLE IV – FEES AND EXPENSES**

As compensation for the services performed under this Agreement, the Town shall pay Milliman the fees set forth in the Fee Schedule attached hereto as Appendix B for fiscal years up to and including FY 2023-24 and as mutually agreed upon for subsequent fiscal years.

Such fees shall be inclusive of all costs incurred by Milliman for travel, lodging, meals, and other out-of-pocket expenses related to the services performed under this Agreement.

The payment of such fees shall be made within thirty (30) days of the receipt of an approved invoice by the Town's Finance Department.

#### **ARTICLE V – TERM**

The term of this Agreement and the performance of Milliman's services hereunder shall commence as soon as practicable after the execution and delivery of this Agreement by both parties. This Agreement shall thereafter continue in full force and effect until June 30, 2024, unless earlier terminated in accordance with the provisions of Article IX hereof.

#### **ARTICLE VI – NO THIRD PARTY DISTRIBUTION**

Milliman's work is prepared solely for the internal business use of the Town. To the extent that Milliman's work is not subject to disclosure under applicable public records laws, Milliman's work may not be provided to third parties without Milliman's prior written consent. Milliman does not intend to benefit or create a legal duty to any third party recipient of its work product, and Milliman may include a legend on its reports so stating. Milliman's consent to release its work product to any third party may be conditioned on the third party signing a release, subject to the following exception(s): (a) the Town may provide a copy of Milliman's work, in its entirety, to the Town's professional service advisors who are subject to a duty of confidentiality and who agree to not use Milliman's work for any purpose other than to benefit the Town; and (b) the Town may provide a copy of Milliman's work, in its entirety, to other governmental entities, as required by law. No third party recipient of Milliman's work product should rely upon Milliman's work product. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.

#### **ARTICLE VII – LIMITATION OF LIABILITY**

Milliman will perform all services in accordance with applicable professional standards. The parties agree that Milliman shall not be liable to the Town, whether in tort, contract or otherwise, for any damages in excess of five million dollars (\$5,000,000). In no event shall Milliman be liable for lost profits of the Town or any other type of incidental or consequential

damages. The foregoing limitations shall not apply in the event of the intentional fraud, gross negligence, or willful misconduct of Milliman.

#### **ARTICLE VIII – DISPUTES**

In the event of any dispute arising out of or relating to the engagement of Milliman by the Town, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third arbitrator. The arbitrators shall have a background in either insurance, actuarial science or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing, and such discovery shall be conducted consistent with the Federal Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, including the Freedom of Information Act and the Town's Charter, neither party may disclose the content or results of any arbitration hereunder. Provided, however disclosure is permitted to a party's auditors and legal advisors.

#### **ARTICLE IX – TERMINATION**

This Agreement may be terminated as follows:

- (a) By either party, at any time, with or without cause, by giving sixty (60) days written notice to the other party.
- (b) By the Town in the event the Representative Town Meeting fails to appropriate sufficient funds to continue payments under this Agreement.

In the event of termination, the Town shall compensate Milliman for work actually performed and approved up to the date of termination.

Milliman shall retain any records it has relating to the services performed for a period of at least three years from the date of termination.

#### **ARTICLE X – INSURANCE**

Milliman shall, at its own expense and cost, obtain and keep in force during the entire duration of this Agreement the following insurance coverage covering the firm and all of its agents, employees, subcontractors and other providers of services and shall name the

Town, its employees and agents as an Additional Insured on a primary and non-contributory basis to the Commercial General Liability and Automobile Liability policies. **These requirements shall be clearly stated in the remarks section on the Consultant's Certificate of Insurance.** Insurance shall be written with insurance carriers approved in the State of Connecticut as admitted or surplus lines carriers and with a minimum Best's Rating of A-. In addition, all carriers are subject to approval by the Town. Minimum limits and requirements are stated below:

a) Worker's Compensation Insurance:

- Statutory Coverage
- Employer's Liability
- \$500,000 each accident/\$500,000 disease-policy limit/\$500,000 disease each employee

b) Commercial General Liability:

- Including Premises & Operations, Products and Completed Operations, Personal and Advertising Injury, Contractual Liability and Independent Contractors.
- Limits of Liability for Bodily Injury and Building Damage Each Occurrence \$1,000,000 and Aggregate \$2,000,000 (The Aggregate Limit shall apply separately to each job).
- A Waiver of Subrogation shall be provided.

c) Automobile Insurance:

- Including all owned, hired, borrowed and non-owned vehicles
- Limit of Liability for Bodily Injury and Building Damage: Per Accident \$1,000,000

d) Errors and Omissions Liability or Professional Services Liability Policy

- Provide Errors and Omissions Liability or Professional Services Liability Policy for a minimum Limit of Liability of \$3,000,000 each occurrence or per claim.
- The firm agrees to maintain continuous professional liability coverage for the entire duration of the contract, and shall provide for an extended reporting period in which to report claims for three (3) years following the expiration or earlier termination of the contract.

Milliman shall provide a Certificate of Insurance as "evidence" of General Liability, Auto Liability including all owned, hired, borrowed and non-owned vehicles, statutory Worker's Compensation and Employer's Liability and Professional Services Liability coverage.

Milliman shall direct its insurer to provide a Certificate of Insurance to the Town before

any work is performed. Milliman will be responsible to provide written notice to the Town 30 days prior to cancellation of any insurance policy. Milliman shall make available to the Town for review copies of any such insurance policies upon request.

#### **ARTICLE XI – HANDLING OF DATA AND OTHER CONFIDENTIAL INFORMATION**

Milliman shall use reasonable efforts to identify errors in data and obtain corrections to erroneous data, but Milliman cannot warrant the correctness of data supplied by the Town or other parties, nor can Milliman be responsible for data not provided in a timely manner. To the extent provided by law, any information received from the Town will be considered "Confidential Information". However, information received from the Town will not be considered Confidential Information if (a) the information is or comes to be generally available to the public during the course of Milliman's work, (b) the information was independently developed by Milliman without resort to information from the Town, or (c) Milliman appropriately receives the information from another source who is not under an obligation of confidentiality to the Town. Milliman agrees that Confidential Information shall not be disclosed to any third party.

#### **ARTICLE XII – RECORD RETENTION**

Throughout the term of this Agreement, all records associated with the services performed hereunder shall be retained at Milliman's expense. Milliman shall continue to retain all such records for a period of three (3) years after the expiration or earlier termination of this Agreement unless Milliman is notified in writing by the Town of the need to extend the retention period. Milliman shall provide all records to the Town, or to any successor actuaries, upon the Town's request.

#### **ARTICLE XIII – INDEPENDENT CONTRACTOR**

Milliman's relationship with the Town shall at all times be that of an independent contractor. Nothing in this Agreement shall be construed to designate Milliman, or any of its employees, as employees or agents of the Town.

#### **ARTICLE XIV – NOTICE**

Any notice, request or other communication to either party by the other concerning the terms and conditions of this Agreement shall be in writing and shall be deemed given when actually received by the addressee, having been hand delivered or sent postage prepaid, by certified or registered United States mail, return receipt requested, addressed as follows:

If to Milliman: Milliman, Inc.  
80 Lambertson Road  
Windsor, Connecticut 06095-2126  
Attn: Rebecca A. Sielman, Principal

If to Westport: Town of Westport  
110 Myrtle Avenue  
Westport, Connecticut 06880  
Attn: James S. Marpe, First Selectman  
cc: Town Attorney

#### ARTICLE XV – MISCELLANEOUS

- a) **Modifications** – This Agreement or any part thereof may not be modified, except by written agreement of the parties signed by the duly authorized representatives of the parties.
- b) **No Waiver** – No omission or delay by either party to this Agreement at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms of this Agreement, shall be a waiver of any such right or remedy to which either party is entitled, nor shall it in any way affect the right of either party to enforce such provisions thereafter.
- c) **Applicable Law** – This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut.
- d) **Severability** – If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other provisions hereof shall in no way be affected thereby.
- e) **Successors and Assigns** – Neither party shall assign or transfer this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of the parties and their respective permitted successors and assigns.
- f) **Entire Agreement** – This Agreement constitutes the entire Agreement between the parties and supersedes all previous agreements and understandings relating to the services to be performed under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST/WITNESS:

TOWN OF WESTPORT, CONNECTICUT

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
James S. Marpe  
First Selectman

\_\_\_\_\_  
Date

ATTEST/WITNESS:

MILLIMAN, INC.

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Rebecca A. Sielman  
Principal

\_\_\_\_\_  
Date

Approved as to form:

Approved as to compliance with the  
Charter of the Town of Westport:

\_\_\_\_\_  
Eileen Flug  
Assistant Town Attorney

\_\_\_\_\_  
Gary Conrad  
Finance Director

**APPENDIX A**

Copy of Request for Proposal, (#12-676T) Dated November 18, 2011  
Copy of Milliman Proposal Dated December 2, 2011

**APPENDIX B**

<b>Fiscal Year</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>
<b>Pension Services</b> (evenly split across five plans)					
Valuation and report	\$55,000	\$55,000	\$56,500	\$58,000	\$59,500
GASB 67/68	19,000	19,000	19,500	20,000	20,500
Active statements	10,000	10,000	10,500	11,000	11,500
Costa Mesa listing	2,500	2,500	2,600	2,700	2,800
<b>OPEB Services</b>					
Valuation and report	\$24,000	N/A	\$26,000	N/A	\$28,000
GASB 74/75	3,800	3,800	3,900	4,000	4,100



6. To take such action as the meeting shall determine to approve the agreement with StreetScan Inc. for Automated Asset Management Services related to street and sidewalk maintenance.

## AGREEMENT FOR SERVICES

THIS AGREEMENT FOR SERVICES ("AGREEMENT") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between TOWN OF WESTPORT, CT, with offices at 110 Myrtle Avenue, Westport CT 06880, hereinafter called the MUNICIPALITY and STREETSCAN, INC., with offices at 151 South Bedford Street, Suite #2, Burlington, MA 01803, hereinafter called STREETSCAN (together the "PARTIES").

WHEREAS, the parties hereto entered into an Agreement for Services on January 10, 2019 (the "2019 AGREEMENT") providing for pavement inspection and management services as provided in that Agreement; and

WHEREAS, the parties intend to terminate the 2019 Agreement and continue the Services (as defined below) for another three (3) years according to the terms of this Agreement;

WITNESSETH, for the consideration hereinafter set forth, the PARTIES hereto agree as follows:

### ARTICLE 1 - ENGAGEMENT OF STREETSCAN

The MUNICIPALITY hereby engages STREETSCAN, and STREETSCAN hereby accepts the engagement to perform the pavement inspection and management services for the MUNICIPALITY as provided in this Agreement. The parties hereby terminate the 2019 Agreement, except that Articles 6, 8, 10, and 11 shall survive and remain in effect.

### ARTICLE 2 - SCOPE OF SERVICES

2.1 Services; Term of Agreement. STREETSCAN shall perform for the MUNICIPALITY the services (the "SERVICES") set forth in the Sales Order attached hereto as **Exhibit A**, as such services are further described in STREETSCAN'S proposal to the MUNICIPALITY dated April 28, 2020 (the "PROPOSAL," attached hereto as **Exhibit B**). The SERVICES include, without limitation, (i) Pavement Management and Sidewalk Management data collections (as described in Exhibits A and B hereto) ("2022 SCANNING") in calendar year 2022, (ii) an annual software license to use STREETSCAN's StreetLogix software and STREETSCAN's Pavement Image Viewer and Sidewalks Image Viewer (together with the StreetLogix software, "SOFTWARE"); and (iii) hosting the DELIVERABLES (as defined below) and providing the MUNICIPALITY with the access and right to use the DELIVERABLES using the SOFTWARE. All such SERVICES shall commence on the date first above written (the "EFFECTIVE DATE") and shall end three (3) years after the EFFECTIVE DATE, unless further extended as provided in Section 9.2 hereof.

2.2 2022 Pavement and Sidewalk Scanning. STREETSCAN shall conduct the 2022 SCANNING commencing on or after April 1, 2022 and shall complete the 2022 SCANNING before October 1, 2022. Before October 1, 2022, STREETSCAN shall deliver to the MUNICIPALITY the pavement imagery and sidewalk videos, and the Pavement and Sidewalk Management Plans, with databases in SQL format (together, "DELIVERABLES").

2.3 Annual Web Hosting and License to Use Software. STREETSCAN shall deliver a copy of all DELIVERABLES to the MUNICIPALITY when they are created, and STREETSCAN shall also host the DELIVERABLES created pursuant to this Agreement, as well as the DELIVERABLES created pursuant to the 2019 Agreement, on its StreetLogix website, and shall provide the MUNICIPALITY with access to all such DELIVERABLES through a license to use the SOFTWARE, all as described in Article 9 hereof. As used in this Agreement, the term "WEB HOSTING" means STREETSCAN's hosting of the DELIVERABLES and the MUNICIPALITY's license and right to use and access the DELIVERABLES using the SOFTWARE.

2.4 The SERVICES, DELIVERABLES and WEB HOSTING are herein referred to together as the "PROJECT."

2.5 This AGREEMENT represents the full and complete agreement between the PARTIES with respect to the PROJECT. Terms and conditions may be changed or additional terms added only by written amendment to this AGREEMENT signed by both PARTIES.

### ARTICLE 3 - RESPONSIBILITIES OF THE MUNICIPALITY

The MUNICIPALITY, without cost to STREETSCAN, shall do the following in a timely manner so as not to delay the services of STREETSCAN:

- 3.1 Designate in writing a person to act as the MUNICIPALITY'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 the MUNICIPALITY's policies and decisions with respect to materials, equipment elements and systems pertinent to the work covered by this AGREEMENT.
- 3.2 The MUNICIPALITY's representative will coordinate with officials and other MUNICIPALITY employees who have knowledge of pertinent conditions and will confer with STREETSCAN regarding both general and special considerations relating to the PROJECT.
- 3.3 Assist STREETSCAN by placing at STREETSCAN'S disposal all available information pertinent to the PROJECT or requested by STREETSCAN including previous reports and other historical data relative to design or construction of the roadways in the MUNICIPALITY.
- 3.4 Arrange for access to and make all provisions for STREETSCAN to enter upon public and private lands as required for STREETSCAN to perform its work under this AGREEMENT. STREETSCAN shall coordinate its pavement and sidewalk scanning with the MUNICIPALITY and shall notify the MUNICIPALITY if it encounters any debris, trash, trash cans, or other obstructions so that the MUNICIPALITY can arrange for such obstructions to be removed before the service is completed, in order to not affect the quality of the scan.
- 3.5 Furnish STREETSCAN all needed topographic, property, boundary and right-of-way maps.

Data provided in standard GIS file formats are preferred.

STREETSCAN requires a target road GIS layer with segmentation, either from the MUNICIPALITY or from the State DOT. If neither is available, STREETSCAN will create it from a list of target roads from intersection to intersection or as otherwise directed, charging STREETSCAN's standard engineering billing rates, only with MUNICIPALITY's written consent. If MUNICIPALITY requests a different segmentation after the processing has begun, results will be delayed, and STREETSCAN will charge STREETSCAN's standard engineering billing rate for implementing the segmentation change, only with MUNICIPALITY's written consent.

STREETSCAN will use MUNICIPALITY's pavement maintenance methods and pricing for the pavement maintenance plan, if it is provided before the end of the data collection. Otherwise, STREETSCAN will use its default pavement maintenance methods and pricing. Subsequent changes are billed at STREETSCAN's standard engineering billing rates, only with MUNICIPALITY's written consent.

STREETSCAN's standard engineering billing rates are attached hereto as **Exhibit C**.

- 3.6 Cooperate with and assist STREETSCAN in all additional work that is mutually agreed upon in writing.
- 3.7 Pay STREETSCAN for work performed in accordance with the terms specified herein.

#### ARTICLE 4 - TIME OF PROJECT

STREETSCAN will initiate work under this AGREEMENT upon receipt of a fully-executed copy of this AGREEMENT from the MUNICIPALITY. STREETSCAN agrees to provide the SERVICES, deliver the DELIVERABLES, and provide WEB HOSTING in a timely manner and within the timing provided in Section 2 hereof. The PARTIES recognize that the services being provided by STREETSCAN are subject to impact by winter weather and technological issues that may cause delays during the pavement inspection period. STREETSCAN agrees to use its best efforts to avoid delays.

#### ARTICLE 5 - PAYMENTS TO STREETSCAN

- 5.1 Fees. For all SERVICES, DELIVERABLES, WEB HOSTING and other obligations of STREETSCAN performed under this AGREEMENT, the MUNICIPALITY agrees to pay STREETSCAN the total amount set forth in the Sales Order set forth in **Exhibit A**, based on those services selected by the MUNICIPALITY as set forth on such Sales Order. STREETSCAN will, at its own cost and expense, furnish all of the material, supplies, tools, equipment, labor, travel, subsistence, communications, copies, shipping, vehicles and other services necessary for the performance and completion of the PROJECT. To spread out the cost of the 2022 SCANNING, the total cost of the SERVICES, DELIVERABLES, and WEB HOSTING shall be NINETEEN THOUSAND SEVEN HUNDRED EIGHTY-EIGHT DOLLARS (\$19,788) per year for each of the three (3) years of this Agreement.

5.2 INTENTIONALLY OMITTED

5.3 Annual Payment. The MUNICIPALITY agrees to make payment to STREETSCAN within thirty (30) days after receipt of the annual invoice.

5.4 Termination and Remedies.

5.4.1 If either PARTY fails to fulfill, in a timely and proper manner, its obligations under this AGREEMENT, the other PARTY shall thereupon have the right to terminate this AGREEMENT with seven (7) days' written notice of such failure and termination to the other PARTY.

5.4.2 In the event of any termination of this AGREEMENT by either PARTY, (i) STREETSCAN shall continue to render services as provided in this Agreement until the effective date of the termination; (ii) all finished and unfinished DELIVERABLES prepared by STREETSCAN shall be delivered to the MUNICIPALITY; (iii) STREETSCAN shall reimburse MUNICIPALITY a portion of all annual fees that have been paid prior to the date of termination, so that the MUNICIPALITY will be fully reimbursed for (a) the portion of any and all such fees that relate to prepayment for the 2022 SCANNING (or, if the scanning has begun, the pro-rated portion of such fees that relate to any portion of the scanning that has not been completed by the effective date of the termination), and (b) a pro-rated portion of the current year's fee that relates to WEB HOSTING calculated based on the percentage of days in the contract year that remain after the effective date of termination.

ARTICLE 6 - GENERAL PROVISIONS

6.1 Standard of Care

The services provided by STREETSCAN shall be performed in accordance with generally accepted professional practice consistent with that degree of skill and care ordinarily exercised by similar professionals performing similar services under the same or similar circumstances and conditions.

6.2 Risk Allocation/Limitation of Liability

6.2.1 STREETSCAN agrees to and shall indemnify and defend the MUNICIPALITY and hold the MUNICIPALITY harmless from any and all claims, losses, costs and expenses (including but not limited to attorneys' fees and costs of litigation), damages, fines, penalties and/or liabilities of any nature whatsoever arising out of or in connection with or relating in any way to (or alleged to arise out of or in connection with or alleged to relate in any way to) any breach or violation by STREETSCAN of this AGREEMENT or STREETSCAN's negligence, willful misconduct, or intentional acts or omissions, or any claim of infringement related to the SOFTWARE. Notwithstanding the above, STREETSCAN shall be liable only to the extent that its negligence, willful misconduct, or intentional acts or omissions are the proximate cause of any injury or damage to the MUNICIPALITY. In the event that

STREETSCAN and the MUNICIPALITY are adjudicated or otherwise found to be jointly at fault, STREETSCAN'S liability shall be limited to the proportion or degree of its actual fault, and recovery against STREETSCAN shall be limited to STREETSCAN'S percentage share of the joint fault as applied against the total amount recoverable.

6.2.2 STREETSCAN is not responsible for any delay, disruption or liabilities caused by the failure or the inability of any state, federal, local, or other governmental authority to review or take other appropriate action on a timely basis with respect to services performed by STREETSCAN under this AGREEMENT.

### 6.3 Governing Law; Jurisdiction

This AGREEMENT shall be deemed to have been made in Connecticut, and the validity, interpretation and performance of this AGREEMENT shall be governed by and construed in accordance with the substantive law of Connecticut, excluding such laws as pertain to conflicts of law. Any litigation that arises between the PARTIES shall be initiated and pursued in the courts of the State of Connecticut, and each PARTY consents to jurisdiction of the Connecticut courts.

### 6.4 Insurance

STREETSCAN shall obtain the minimum insurance coverages described below and maintain such coverages for the life of this AGREEMENT, or longer if otherwise required by this AGREEMENT, from a company or companies with an A.M. Best rating of A- (VII) or better. All insurance shall be carried with insurers authorized to do business in the State of Connecticut. Such insurance shall protect the MUNICIPALITY from claims that may arise out of or result from, or may be alleged to arise out of or result from, STREETSCAN'S obligations under this AGREEMENT and/or from the obligations of any subcontractor and/or any other person or entity directly or indirectly employed by said STREETSCAN and/or by anyone for whose acts said STREETSCAN may be liable. STREETSCAN must require that all sub-contractors, agents and assigns procure and maintain sufficient insurance protection. STREETSCAN shall not commence work under this AGREEMENT until all insurance required of STREETSCAN has been procured and approved by the MUNICIPALITY.

Before the execution of this AGREEMENT by the MUNICIPALITY, STREETSCAN shall provide the MUNICIPALITY with certificates of insurance for each policy required by this AGREEMENT. STREETSCAN shall provide updated certificates of insurance at least 30 days before any renewal of any such coverage. The certificates shall require notice of cancellation to the MUNICIPALITY according to policy provisions.

#### 6.4.1 Workers Compensation:

STREETSCAN shall provide statutory workers compensation insurance required by law with employer's liability limits for at least the amounts of liability for bodily injury by accident of \$500,000 each accident and bodily injury by disease of \$500,000 including a waiver of subrogation in favor of the MUNICIPALITY.

#### 6.4.2 Commercial General Liability Insurance:

STREETSCAN shall provide commercial general liability insurance including products and completed operations. Limits shall be at least: bodily injury & property damage coverage with an occurrence limit of \$1,000,000; personal & advertising injury limit of \$1,000,000 per occurrence; general aggregate limit of \$2,000,000 (other than products and completed operations); products and completed operations aggregate limit of \$2,000,000.

- Coverage will continue for three (3) years after the completion of the work.
- The policy shall name the MUNICIPALITY as an additional insured and include ISO Form CG 2010 (04/13) and CG 2037 (04/13) or equivalent.
- Such coverage will be provided on an occurrence basis and shall be primary and shall not contribute in any way to any insurance or self-insured retention carried by the MUNICIPALITY.
- The policy shall contain a waiver of subrogation in favor of the MUNICIPALITY.
- Such coverage shall contain a broad form contractual liability endorsement or wording within the policy form to comply with the hold harmless and indemnity provision(s) of all agreements between the MUNICIPALITY and STREETSCAN.
- Deductible and self-insured retentions shall be declared and are subject to the approval of the MUNICIPALITY.

#### 6.4.3 Commercial Automobile Insurance:

STREETSCAN shall provide commercial automobile insurance for any owned, non-owned or hired autos, in the amount of \$1,000,000 each accident covering bodily injury and property damage on a combined single limit basis. The policy shall name the MUNICIPALITY as an additional insured and provide a waiver of subrogation.

#### 6.4.4 Umbrella or Excess Liability Insurance:

STREETSCAN shall provide an umbrella or excess liability policy in excess (without restriction or limitation) of those limits and coverages described in items (A) through (C). Such policy shall contain limits of liability in the amount of \$4,000,000 each occurrence and \$4,000,000 in the aggregate.

#### 6.5 Non-Discrimination In Employment – STREETSCAN

STREETSCAN agrees and certifies that in providing the services described herein, it shall not discriminate against any employee or applicant because of race, color, religion, age, sex, sexual orientation, or national origin. STREETSCAN further agrees to be bound by and abide by any and all applicable governmental regulations pertaining to non-discrimination.

#### 6.6 Precedence

In the event of any conflict or inconsistency between the provisions of this AGREEMENT and the PROPOSAL, the provision that confers the greater obligation on STREETSCAN shall control.

6.7 Severability

If any of the terms or provisions of this AGREEMENT shall be finally determined to be invalid or unenforceable in whole or 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 enforceable provision that comes as close as possible to the intention of the stricken provision.

6.8 Survival

This ARTICLE 6 shall survive the completion of services under this AGREEMENT and the termination of this AGREEMENT for any cause.

6.9 Assignment

This AGREEMENT shall not be assigned by either PARTY without the prior written consent of the other PARTY. Any attempted assignment of this AGREEMENT without such prior written consent shall be void.

ARTICLE 7 – INTENTIONALLY OMITTED.

ARTICLE 8 - OWNERSHIP AND USE OF DELIVERABLES

- 8.1 All DELIVERABLES shall be considered to be “works made for hire” as defined under applicable copyright laws and shall become the property of the MUNICIPALITY upon delivery to the MUNICIPALITY, in whatever format, and the MUNICIPALITY will be the sole and exclusive owner and copyright holder of all rights and titles in and to the DELIVERABLES. STREETSCAN acknowledges that these rights include the rights to use, re-use, modify, distribute, copy and transfer them for any purposes. The MUNICIPALITY shall become the authors of the DELIVERABLES and assume any and all liabilities and responsibilities if any modifications are made thereto. If for any reason any one or more of the DELIVERABLES are determined at any time not to be a “work made for hire,” STREETSCAN hereby irrevocably, exclusively and perpetually transfers and assigns to the MUNICIPALITY all worldwide right, title and interest that it may have in and to the DELIVERABLES and other documents, in whatever format now existing or hereafter created, including but not limited to all copyrights and other intellectual property rights therein, as well as all renewals and extensions thereto.
- 8.2 STREETSCAN understands and agrees that all information and other property of the MUNICIPALITY that may be disclosed to STREETSCAN, including without limitation the Cartegraph data, shall remain the property of the MUNICIPALITY or of any third party who may own it and furnished it to the MUNICIPALITY. At the termination of STREETSCAN’s engagement under this AGREEMENT, or at the request of the MUNICIPALITY at any time, STREETSCAN will immediately deliver to the MUNICIPALITY all information, and all other property of the MUNICIPALITY or of any such third party, which are in the possession,



custody or control of STREETSCAN.

#### ARTICLE 9 – WEB HOSTING

- 9.1 STREETSCAN agrees to host and maintain a copy of the DELIVERABLES on its server(s) for the MUNICIPALITY's access using the SOFTWARE, and STREETSCAN will maintain a backup version of all such data onsite and through cloud based services, in addition to delivering to MUNICIPALITY the DELIVERABLES as provided in Article 2. STREETSCAN hereby grants MUNICIPALITY a nonexclusive license to use the SOFTWARE for its business purposes in accordance with the terms of this Agreement. MUNICIPALITY'S license for access to the SOFTWARE is effective for three (3) years commencing as provided in Section 2 hereof and is renewable as provided in Section 9.2 below. The annual fee set forth in **Exhibit A** includes the entire fee for one (1) year of the MUNICIPALITY's right for an unlimited number of concurrent users to use the SOFTWARE, for tech support, and for regular backups to MUNICIPALITY's server(s). STREETSCAN shall provide MUNICIPALITY with tech support contact information and provide prompt tech support response and resolution times. STREETSCAN shall provide immediate response and resolution of high priority support requests as identified by the MUNICIPALITY.
- 9.2 At the expiration of this Agreement, the MUNICIPALITY has the option to renew its SOFTWARE license and access subscription to the SOFTWARE on an annual basis. Renewals are good for one (1) year and must be paid in a one-time payment made at the beginning of the renewal term. STREETSCAN reserves the right to withhold access pending receipt of the renewal payment. Renewal pricing is based on the surveyed lane miles and is subject to adjustment for inflation based on the most recent annual Consumer Price Index for All Urban Consumers (CPI-U) in the Westport area. Any and all renewals will be handled by the execution of an additional subscription agreement. The renewal will not begin until payment is received by STREETSCAN. Renewals may be made as long as the MUNICIPALITY desires access to the SOFTWARE. Non-payment of the renewal notice, once the renewal has begun, will be grounds for termination of the executed subscription agreement.

#### ARTICLE 10 – CONFIDENTIALITY

STREETSCAN understands and acknowledges that MUNICIPALITY is required to disclose certain records and information under the Connecticut Freedom of Information Act. In the event that any information owned by STREETSCAN is conspicuously marked "CONFIDENTIAL OR PROPRIETARY INFORMATION OF STREETSCAN, INC, (such so-marked information is referred to herein as "CONFIDENTIAL INFORMATION") then MUNICIPALITY shall not disclose such information to any person without the prior written consent of STREETSCAN, except to the extent that MUNICIPALITY can show that such information (a) was, is, or becomes generally available to and known by the public through no fault of the MUNICIPALITY; or (b) is lawfully acquired by the MUNICIPALITY from sources that are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation; or (c) is required by law to be disclosed. If the MUNICIPALITY is compelled to disclose any CONFIDENTIAL INFORMATION by judicial or administrative

process or by other requirements of applicable law, the MUNICIPALITY shall, to the extent legally permissible, promptly notify STREETSCAN in writing and shall disclose only that portion of such CONFIDENTIAL INFORMATION that the MUNICIPALITY is advised by its counsel is legally required to be disclosed.

#### ARTICLE 11 – SOLE REMEDY

Notwithstanding anything to the contrary contained herein, MUNICIPALITY and STREETSCAN agree that their sole and exclusive claim, demand, suit, judgment, or remedy against each other shall be asserted against each other's corporate or municipal entity and not against each other's shareholders, directors, officers, elected or appointed officials, or employees.

#### ARTICLE 12 – INDEPENDENT CONTRACTOR

The PARTIES hereto acknowledge and agree, and STREETSCAN hereby represents and warrants, that STREETSCAN is an independent contractor and not an employee or agent of the MUNICIPALITY; that STREETSCAN shall have the sole obligation and responsibility to pay any and all federal, state and local taxes, including wage withholding, payroll, unemployment insurance, Social Security, and sales and income taxes, associated with any payments or other compensation STREETSCAN directly or indirectly receives from the MUNICIPALITY; and that neither STREETSCAN nor any employee or other personnel of STREETSCAN is entitled to receive or is eligible for any benefits which accrue to employees of the MUNICIPALITY, including without limitation such benefits as health insurance and retirement benefits. Without the express prior written approval of the MUNICIPALITY, neither STREETSCAN nor any employee or other personnel of STREETSCAN will do or perform any act or make any representation, promise or commitment which purports in any way to bind the MUNICIPALITY.

#### ARTICLE 13 – NOTICES

Any notices or demands required or permitted by law or by any provision of this Agreement shall be in writing, and may be delivered personally, by reputable private delivery service, or by the United States mail, registered or certified, return receipt requested and postage prepaid. If to STREETSCAN, notices should be addressed to Ralf Birken at 151 South Bedford Street, Suite #2, Burlington, MA 01803.

If to the MUNICIPALITY, notices should be addressed to Town of Westport, Attn: First Selectman, 110 Myrtle Avenue, Westport, CT 06880 with a copy to the Assistant Town Attorney, 110 Myrtle Avenue, Westport, CT 06880.

Notices shall be effective when delivery is made during regular business hours.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first above written.

STREETSCAN, INC.

TOWN OF WESTPORT CT

By: \_\_\_\_\_  
Name: Ralf Birken  
Title: CEO

By: \_\_\_\_\_  
James S. Marpe  
First Selectman

EXHIBIT A  
SALES ORDER

EXHIBIT B

APRIL 28, 2020 PROPOSAL

EXHIBIT C

STANDARD ENGINEERING BILLING RATES

**EXHIBIT A**

<b>StreetScan 2019 Rates</b>		
Executive	\$	260
Senior Engineer/Professional Engineer	\$	220
Senior Project Manager	\$	180
Computer Engineer	\$	150
R & D Engineer	\$	140
Localization Specialist	\$	140
Project Manager	\$	100
GIS Technician	\$	85
Field Engineer	\$	75
Driver	\$	75
Field Technician	\$	60
QC Technician	\$	45