

Board of Selectmen Meeting  
December 23, 2020  
Notice & Agenda  
REVISED 12-21-2020

Notice is hereby given that the Westport Board of Selectmen, Traffic Authority and Water Pollution Control Authority will hold a public meeting on Wednesday, December 23, 2020 at 9:00 AM. Pursuant to the Governor's Executive Order No. 7B, there is no physical location for this meeting. It will be held electronically, live streamed on [www.westportct.gov](http://www.westportct.gov), and broadcast on Westport's Optimum Government Access Channel 79 and Frontier Channel 6020. Emails to the Board of Selectmen *prior to the meeting* may be sent to [selectman@westportct.gov](mailto:selectman@westportct.gov). Comments to be read *during the public comment* portion of the meeting may be emailed to [BOScomments@westportct.gov](mailto:BOScomments@westportct.gov). Best efforts will be made to read public comments if they are received during the public comment period, include your name and are brief; no longer than 3 minutes. Agenda to include but not be limited to the following items and is subject to revision:

1. To take such action as the meeting may determine to approve the Minutes of the Board of Selectmen's meeting of December 9, 2020 and the Water Pollution Control Authority's meeting of December 9, 2020.
2. To take such action as the meeting may determine to approve the request from the Boy Scouts Troop 39 to use Town property known as Imperial Avenue Parking Lot on Saturday, January 9, 2021 (snow date Sunday, January 10, 2021) from 7 AM to 5:00 PM for the Christmas tree recycling program, contingent upon compliance with comments and/or safety recommendations from relevant Town departments, submission of certificate of insurance approved by the Town Attorney's office, and in accordance with the Town Policy on the Use of Town Property, Facilities and Public Roadways.
3. To take such action as the meeting may determine, upon the request from the Town Clerk, to approve the Agreement between the Town of Westport and Avenu Insights & Analytics, LLC as it relates to microfilm storage services.
4. To take such action as the meeting may determine, upon the request from the Director of Public Works, to approve the Agreement between the Town of Westport and RACE Coastal Engineering LLC, for Design, Permitting and Construction Administration Professional Services for the rehabilitation of the Old Mill walkway and tide gate structures.

*Item #5 added after WestportNews publication deadline*

5. To take such action as the meeting may determine, upon the request from the Director of Public Works, to approve an Agreement between the Town of Westport and CAI Technologies of Littleton New Hampshire, for Technical Support Services associated with integration of the Town's Geographic Information System into the Accela Civic Platform.

*Item #6 added after WestportNews publication deadline*

6. Acting in its capacity as the Water Pollution Control Authority, to approve the sanitary sewer connection for property located at 28 Narrow Rocks Road, contingent upon compliance with the WPCA Collection System Supervisor's letter of December 16, 2020.

7. To take such action as the meeting may determine, in accordance with Section 1-225b of the Connecticut General Statutes, to review and approve the 2021 Calendar of regularly scheduled public meetings of the Board of Selectmen, Local Traffic Authority and Water Pollution Control Authority.

*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 [eflug@westportct.gov](mailto:eflug@westportct.gov) at least three (3) business days prior to the scheduled meeting or event to request an accommodation.*

*REVISION 12-21-2020 Item added*

8. To take such action as the meeting may determine, upon the request of the Fire Chief, to review and approve the Communications System and Service Agreement between the Town of Westport and Motorola Solutions, Inc. as it relates to the Public Safety Radio System.

Executive Session

It is anticipated that the Board of Selectmen will vote to enter into Executive Session to discuss pending litigation.

James S. Marpe, First Selectman

ITEM #1

1. To take such action as the meeting may determine to approve the Minutes of the Board of Selectmen's meeting of December 9, 2020 and the Water Pollution Control Authority's meeting of December 9, 2020.



Board of Selectmen Meeting  
December 9, 2020  
DRAFT MINUTES

The Westport Board of Selectmen, Traffic Authority and Water Pollution Control Authority held a public meeting on Wednesday, December 9, 2020 at 9:00 AM. Pursuant to the Governor's Executive Order No. 7B, there was no physical location for this meeting. It was held electronically, live streamed on [www.westportct.gov](http://www.westportct.gov), and broadcast on Westport's Optimum Government Access Channel 79 and Frontier Channel 6020.

<https://play.champds.com/westportct/event/11>

MINUTES

1. Jennifer Tooker presented Item #1. Upon motion by Jim Marpe, seconded by Melissa Kane and passing by a vote of 3-0, it was:

RESOLVED, that the Minutes of the Board of Selectmen's meeting of November 25, 2020 are hereby APPROVED.

APPROVE TEMPORARY CONSTRUCTION EASEMENT AT 44 MAIN STREET

2. David DiScala, representing AV Tuchy Builders, presented Item #2. Conditions of the agreement as well the dates the encroachment would be in place were discussed. The initial agreement will expire August 31, 2021, with the applicant returning to the Board of Selectmen to request an extension if necessary. Upon motion by Jim Marpe, seconded by Melissa Kane and passing by a vote of 3-0, it was:

RESOLVED, that the Temporary Construction Easement between AV Tuchy Builders and the Town of Westport for safety fencing and construction staging encroaching on town property adjacent to 44 Main Street and its facade fronting on Elm Street, contingent upon receipt of evidence of insurance and compliance with conditions and safety requirements outlined in department comments, is hereby APPROVED.

APPROVE TEMPORARY CONSTRUCTION EASEMENT AT 97 MAIN STREET

3. John Lundebrek, representing Elder Jones, Inc., presented Item #3. Conditions of the agreement as well the dates the encroachment would be in place were discussed. The initial agreement will expire April 28, 2021, with the applicant returning to the Board of Selectmen to request an extension if necessary. Upon motion by Melissa Kane, seconded by Jim Marpe and passing by a vote of 3-0, it was:

RESOLVED, that the Temporary Construction Easement between Elder Jones, Inc, and the Town of Westport for safety fencing and construction staging encroaching on town property adjacent to 97 Main Street and the portion of the property fronting on Parker Harding Plaza, contingent upon receipt of evidence of insurance and compliance with conditions and safety requirements outlined in department comments, is hereby APPROVED.

APPROVE RESOLUTION FOR JAMES S MARPE TO EXECUTE AND DELIVER CONTRACT WITH STATE OF CT, DEPARTMENT OF ECONOMIC & COMMUNITY DEVELOPMENT

4. Historic District Commission Chair Bill Harris presented Item #4. Mr. Harris described the proposed project and the terms of the grant. Upon motion by Melissa Kane, seconded by Jim Marpe and passing by a vote of 3-0, it was:



RESOLVED, that First Selectman James S. Marpe is hereby EMPOWERED to execute and deliver in the name of and on behalf of the Town of Westport a certain contract with the State of Connecticut, Department of Economic and Community Development, and to affix the corporate seal, if any, as it relates to preparing a National Register nomination for the Lees Canal District.

APPROVE THIRD ONE-YEAR RENEWAL FOR JANIK GOLF, LLC

5. Parks & Recreation Director Jennifer Fava presented Item #5. Ms. Fava noted the positive feedback her department has received on behalf of Mr. Janik, and she recommended exercising the contract option to extend the term for the final 1-year renewal. Upon motion by Jim Marpe, seconded by Melissa Kane and passing by a vote of 3-0, it was:

RESOLVED, that the third 1-year term renewal of the agreement between the Town of Westport and Janik Golf, LLC for the services of a golf professional at Longshore Golf Course is hereby APPROVED.

*Item #6 is noted in the WPCA Minutes of 12-09-2020*

ADJOURNMENT

Upon motion by Melissa Kane, seconded by Jim Marpe and passing by a vote of 3-0, the meeting adjourned at 10:10 AM

Eileen Francis, Recording Secretary

Water Pollution Control Authority Meeting  
December 9, 2020  
DRAFT MINUTES

The Westport Board of Selectmen, acting in its capacity as the Water Pollution Control Authority, held a public meeting on Wednesday, December 9, 2020 at 9:00 AM. Pursuant to the Governor's Executive Order No. 7B, there was no physical location for this meeting. It was held electronically, live streamed on [www.westportct.gov](http://www.westportct.gov), and broadcast on Westport's Optimum Government Access Channel 79 and Frontier Channel 6020.

<https://play.champds.com/westportct/event/11>

APPROVE SANITARY SEWER CONNECTION AT 27 GORHAM AVENUE

1. WPCA Item #1 (BOS Item #6) was presented by WPCA Collection System Supervisor Bryan Thompson. Upon motion by Jim Marpe, seconded by Melissa Kane and passing by a vote of 3-0, it was:

RESOLVED, that the sanitary sewer connection for property located at 27 Gorham Avenue, contingent upon compliance with the WPCA Collection System Supervisor's letter of December 3, 2020 is hereby APPROVED.

ADJOURNMENT

Upon motion by Melissa Kane, seconded by Jim Marpe and passing by a vote of 3-0, the meeting adjourned at 10:10 AM

Eileen Francis, Recording Secretary

## ITEM #2

2. To take such action as the meeting may determine to approve the request from the Boy Scouts Troop 39 to use Town property known as Imperial Avenue Parking Lot on Saturday, January 9, 2021 (snow date Sunday, January 10, 2021) from 7 AM to 5:00 PM for the Christmas tree recycling program, contingent upon compliance with comments and/or safety recommendations from relevant Town departments, submission of certificate of insurance approved by the Town Attorney's office, and in accordance with the Town Policy on the Use of Town Property, Facilities and Public Roadways.





EVENT CHECKLIST and DEPARTMENT COMMENTS

Day, Date, Time of Event	Saturday, January 9, 2021 (snow date Sunday, Jan 10, 2021)
Name of Event	Tree Recycling
Town Property	Imperial Avenue Parking Lot
Event organizer	Troop 39 – Westport
Organizer Contact Info	John Hillhouse 917-992-7995 jhillhouse@att.net
Set Up/Breakdown Times	7 AM – 5PM
Req to Depts Sent	12-15-2020
BOS Approval Date	
FINAL APPROVAL DATE	

	Date
Processing Fee	12-14-2020
Bond	roll
Verified COI	
Verified Hold Harmless	12-14-2020
3 <sup>rd</sup> Party (if Applicable)	
Map/Route/Set-Up	12-14-2020
After Action Report	
Bond Returned	

<b>Approvals/Comments (see att)</b>	✓
Chief of Police	✓
Fire Chief, FMO	✓
Director of Public Works	✓
Director of Parks and Recreation	n/a
Director of Westport/Weston Health District	✓
Westport Library	n/a



EVENT CHECKLIST and DEPARTMENT COMMENTS

**COMMENTS:**

DATE:		
12-14-2020	<b><u>POLICE:</u></b>	No issues with PD  Foti Koskinas
12-14-2020	<b><u>FIRE:</u></b>	No issues – Rob Yost
12-14-2020		FMO No objections - Nathaniel Gibbons, Fire Marshal
12-14-2020	<b><u>PUBLIC WORKS:</u></b>	No Issues with DPW. Please coordinate with DPW office as to exact field setup and chip pile location.  Peter Ratkiewich, P.E. Director of Public Works
	<b><u>PARKS &amp; REC:</u></b>	
12-14-2020	<b><u>WWHD:</u></b>	Eileen – The WWHD has no objections to the Boy Scouts Tree use of the Imperial Ave Lot for tree recycling Jan 9.  Mark C
	<b><u>LIBRARY:</u></b>	

**OTHER NOTES AND COMMENTS:**

**APPLICATION FOR USE OF TOWN-OWNED PROPERTY, FACILITIES AND/OR PUBLIC ROADWAYS**

Completed applications must be submitted no later than 90 days in advance of scheduled event. Applications not received 90 days in advance of scheduled event may not be approved.

NAME OF NON-PROFIT ORGANIZATION	TRUOP 39 WESTPORT
FUNDRAISING ENTITY (If applicable)	
ADDRESS	71 HILLANDALE RD WESTPORT CT 06880
CONTACT NAME	JOHN HILLHOUSE / DONI WISDOM CELL #: 917-992-7995
E-MAIL ADDRESS	JHILLHOUSE@ATT.NET
NAME OF EVENT	CHRISTMAS TREE RECYCLING
INDIVIDUAL IN CHARGE (on-site on day of event)	JOHN HILLHOUSE / DONI WISDOM CELL #: 917-992-7995
# OF PARTICIPANTS	35-40 Admission Charge (If Any): 0
DATE(S) OF EVENT	1-9-2021 1-10-21 (SNDG DATE)
START DATE & TIME (including set up)	7AM 1-9-2021
END DATE & TIME (including breakdown)	5 PM 1-9-2021
TOWN PROPERTY & ROAD(S) TO BE USED	IMPERIAL AVE PARKING LOT

**\*\*A LEGIBLE map of the route and/or event set-up (including placement of tents and equipment on the Town-owned property) must accompany the application**

Please check any of the following that will be brought onto, provided, or used at the event:

Food/Beverages \_\_\_ Alcohol \_\_\_ Drones \_\_\_ Automobiles   
 Tents over 10'x10' \_\_\_ Bouncy House \_\_\_ (w/prof. installation and trained staff on site)

Third parties providing any of the above are required to sign the Town's Indemnity/Hold Harmless and provide Insurance.

**APPLICANT CHECK LIST:**

- Application
  - Processing Fee = \$100
  - Certified Check = \$1,000
  - Certificate of Insurance
  - Event Permittee Indemnity and Hold Harmless Agreement
  - Third Party Provider Indemnity and Hold Harmless Agreement
  - Map/Route/Set-Up
- (only if providing tents, inflatables, valet services, fireworks, etc.)*

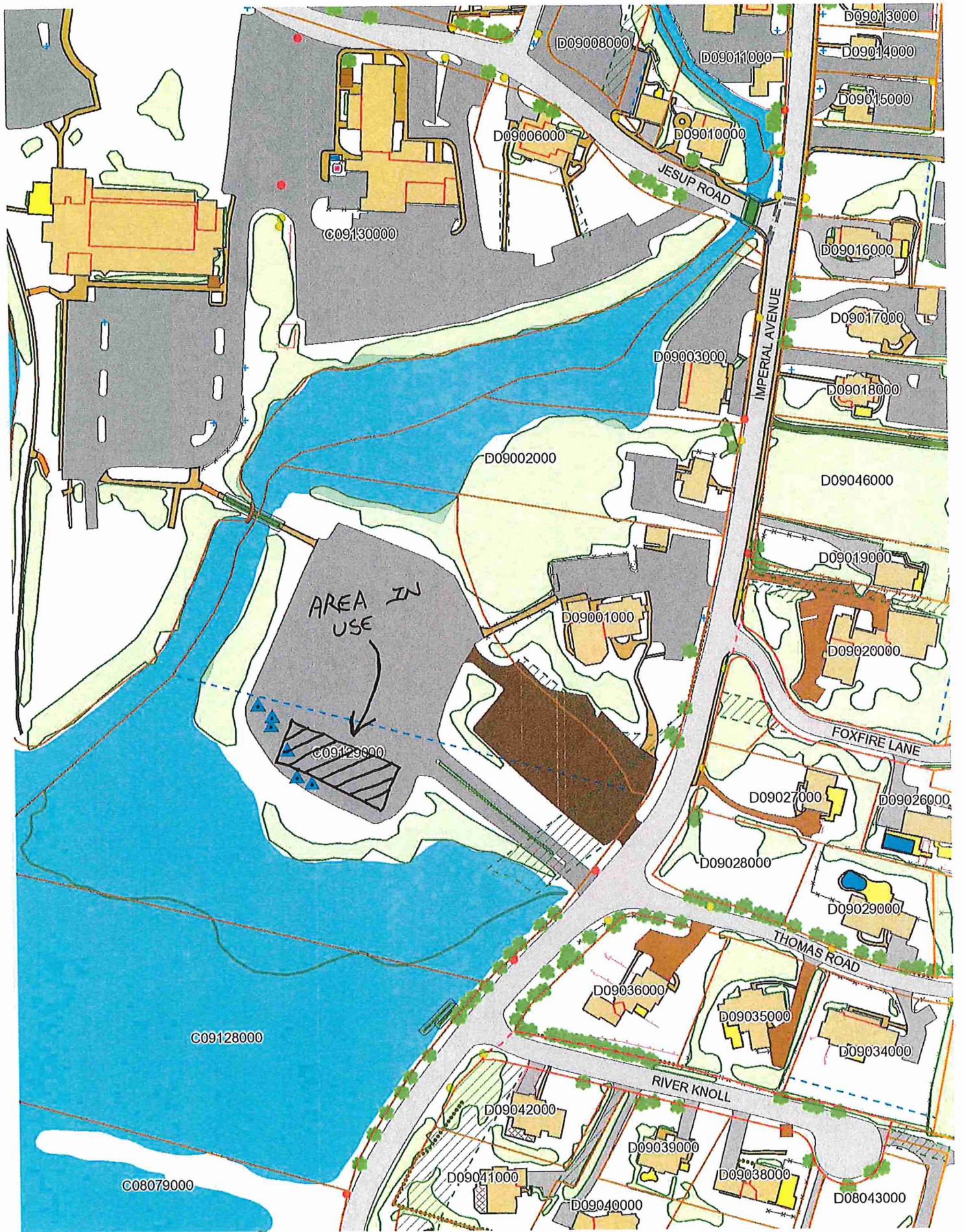
**BELOW FOR OFFICE USE ONLY:**

INSURANCE & INDEMNITY AGREEMENT RECEIVED: _____	DATE _____
Eileen Lavigne Flug, Assistant Town Attorney	
APPROVALS _____	_____
Board of Selectmen/Traffic Authority/BOS Office (BOS Approval Date, if applicable _____)	

**RECEIVED**  
**DEC 14 2020**  
 TOWN OF WESTPORT  
 SELECTMAN'S OFFICE

	COMPLETED
Processing Fee (\$100)	12-14-2020
Certified Check (\$1000)	on file
Certificate of Insurance	
Indemnity/Hold Harmless	12-14-2020
Map / Route / Set-Up	12-14-2020







**EVENT PERMITTEE  
INDEMNITY AND HOLD HARMLESS AGREEMENT**

(revised August 2018)

This Indemnity and Hold Harmless Agreement ("Agreement") is made this 10 day of DECEMBER, 2020 by TROOP 39 WESTPORT [PRINT NAME OF CORPORATION, LLC OR OTHER ENTITY OBTAINING THE PERMIT] ("Indemnitor") of 71 HILLDALE RD (PRINT ADDRESS) for the benefit of the Town of Westport, a municipality in the State of Connecticut ("Town").

**WHEREAS**, Indemnitor has submitted an application (the "Application") for the Town's **permission to use athletic facilities, parks, public roads, the Wakeman Town Farm, and/or other Town-owned property (the "Premises")** for the following event [PRINT NAME OF EVENT]:

CHRISTMAS TREE RECYCLING (the "Event")  
beginning JANUARY 9, 2021 (earliest start date, including set-up) and ending JANUARY 10, 2021 (latest end date including breakdown and rain date),

OR

**WHEREAS**, Indemnitor has requested **permission to hang a banner (the "Banner") across Main Street or at Luciano Park or Compo Beach or at** N/A location on N/A (date(s)),

**NOW THEREFORE**, in consideration of Indemnitor's receipt of said permission from the Town, Indemnitor agrees as follows:

1. Permission to use the Premises for the Event or permission to hang the Banner, as the case may be, may be revoked by the Town immediately upon the breach by Indemnitor of any term of this Agreement or any term or condition of the approved Application. This Agreement shall survive any such revocation, and Indemnitor shall remain bound by the terms of this Agreement.
2. Indemnitor shall indemnify, defend and hold harmless the Town and its agents, employees, elected and appointed officials, boards, commissions, committees, volunteers and representatives, to the fullest extent permitted by law, from and against any and all losses, claims, allegations, actions, awards, costs and expenses (including but not limited to, court costs and attorney's fees), judgments, subrogations and damages of every kind and character which may arise out of or result from, in whole or in part, Indemnitor's use of the Premises or hanging of the Banner, as the case may be, or from the negligent or willful acts or omissions of the Indemnitor or any of its employees or agents, subcontractors, third parties invited or authorized by the Indemnitor to participate at the Event, and/or anyone else for whose acts Indemnitor may be liable, in connection with the Indemnitor's use of the Premises or the hanging of the Banner, as the case may be.
3. Indemnitor shall (i) make no improvements or alterations to the Premises without specific prior written approval from the Town's First Selectman or the Director of Parks and Recreation, (ii) relinquish use of the Premises upon expiration or termination of the Event in the same condition as it was prior to its entrance on the Premises, (iii) remove all litter, trash and other refuse from the Premises following the conclusion of its use, and (iv) use the Premises in strict compliance with the terms and conditions of the approved Application and all policies, procedures and conditions relating to the use of Town-owned properties, and in accordance with all applicable laws, rules, regulations and ordinances of all governmental authorities.
4. Indemnitor shall safeguard all who come upon the Premises and shall protect against any personal injuries and property damage resulting from Indemnitor's use of the Premises.

5. Indemnitor shall obtain the following insurance coverages covering the Indemnitor's obligations under this Agreement, including without limitation claims by participants in the Event, from companies with an A.M. Best rating of A- (VII) or better:
- a. **Commercial General Liability Insurance** including Products and Completed Operations. Limits shall be at least: **Bodily Injury & Property Damage 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) per location; and Products and Completed Operations aggregate limit of \$2,000,000.** For each policy required by this Agreement, the Indemnitor is required to provide the amount of insurance specified in this Agreement or the amount of insurance that the Indemnitor actually has, whichever is higher.
    - i. If drones are permitted at, on or above the Premises, this coverage must include **drone liability insurance** for the limits above.
    - ii. If children at the Event will be under the care, custody or control of the Indemnitor or any employee, volunteer, or other agent of the Indemnitor or any subcontractor of the Indemnitor, this coverage shall include **Abuse and Molestation liability insurance** with a limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate for the actual or threatened abuse or molestation of anyone or any person while in the care, custody or control of any Indemnitor.
    - iii. If alcoholic beverages will be sold, provided and/or served and either (i) a fee is charged for the Event or (ii) an alcoholic beverage permit is obtained, **Liquor Liability insurance** in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless the Event is scheduled as an exception to the liquor liability exclusion on the Commercial General Liability policy.
    - iv. If automobiles are an integral part of the Event (car shows, road rallies, touch-a-truck, filming from automobiles, and the like), **Automobile insurance** in the amount of \$1,000,000 each accident combined single limit covering bodily injury and property damage for all owned, hired and non-owned autos.
    - v. If Indemnitor has employees, **Workers Compensation insurance** required by statute with Employer's Liability limits for at least the amounts of liability for bodily injury by accident of \$500,000 each accident, bodily injury by disease of \$500,000, and \$500,000 disease aggregate, including a waiver of subrogation in favor of the Town.
    - vi. If Indemnitor is renting a Town building, **Damage and Rented Premises Insurance** in the amount of \$500,000 per occurrence.
6. Indemnitor shall provide the Town with Certificate(s) of Insurance on Acord 25 (2016/03) or later edition evidencing all insurance policies required by this Agreement, and all such Certificate(s) of Insurance, shall:
- a. Name the "Town of Westport" as an **additional insured** and include **ISO Form CG 20 12 04 13 ("Additional Insured – State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations")** or equivalent (except that this is not required for Workers Compensation insurance), and
  - b. Be provided on an **occurrence basis** and will be **primary and shall not contribute** in any way to any insurance or self-insured retention carried by the Town, and
  - c. Contain a **waiver of subrogation** in favor of the Town, and
  - d. Contain a **broad form contractual liability** endorsement or wording within the policy form to comply with the hold harmless and indemnity obligations of Indemnitor under this Agreement, and
  - e. Declare all **deductible and self-insured retentions**, and all such deductibles and self-insured retentions are subject to the approval of the Town.
  - f. Show that policies are in effect for all of the days of the Event; otherwise a renewal certificate is required.
  - g. Require notice of cancellation to the Town according to policy provisions.



7. **If a high risk third party, as determined by the Town, (e.g., tent provider, bouncy house provider, valet parking service, fireworks provider) will be authorized to participate at the Event,** the third party shall execute and deliver a separate Indemnity and Hold Harmless Agreement and provide the insurance coverages required hereby.

8. This Agreement and the Town's permission to use the Premises or hang the Banner, as the case may be, shall not be assigned by Indemnitor without the prior written approval of the Town's First Selectman, the Director of Parks and Recreation, or the Farm Director.

9. This Agreement and the Application and the Town's policies and procedures supersede any and all prior agreements and understandings with the Indemnitor regarding the subject matter of this Agreement. This Agreement shall be governed and interpreted in accordance with the laws of the State of Connecticut. No provision of this Agreement shall be deemed waived by the Town unless the waiver is in writing and signed by the Town's First Selectman or the Director of Parks and Recreation. Any provision of this Agreement that is deemed unenforceable by a court of competent jurisdiction shall be deemed amended and construed to have a valid meaning that is the most protective to the Town, and if no such validating construction is possible shall be severed from this Agreement, and the enforceability of the remaining provisions shall not be impaired thereby.

This Agreement shall be binding on Indemnitor and its heirs, executors, administrators, successors and assigns and shall inure to the benefit of the Town of Westport and its agents, employees, elected and appointed officials, boards, commissions, committees, volunteers, representatives and assigns.

[NAMES APPEAR ON FOLLOWING PAGE]

WITNESS

INDEMNITOR

*Diane Cenci*

Print Name: DIANE CENCI  
Print Address: 11 BAYBERRY RIDGE RD  
WESTPORT, CT 06880

TROOP 39 WESTPORT

Print Name of the Corporation, LLC, or other Entity

By *John Hillhouse*

Signature of Authorized Signatory

Print Name: JOHN HILLHOUSE

Print Title: SCOUT MASTER

STATE OF CONNECTICUT )

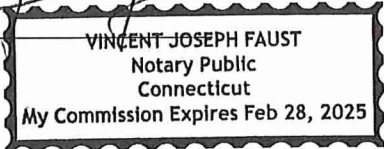
COUNTY OF Fairfield ) ss:

Westport, Connecticut, Dec 14 2020

Personally appeared John Hillhouse signer(s) and sealer of the foregoing instrument, and acknowledged before me the same to be his/her/their free act and deed, and acknowledged before me that he or she is authorized to execute this agreement on behalf of the Indemnitor and to bind the Indemnitor to its terms and that he or she holds the title with the Indemnitor that is written below his or her name above.

*Vincent Joseph Faust*

Notary Public  
Print Name:  
Print Address:  
My Commission Expires: \_\_\_\_\_  
Commissioner of the Superior Court



**IMPORTANT NOTE:**

**PLEASE SEND A COPY OF THIS AGREEMENT TO YOUR INSURANCE BROKER OR COMPANY  
SO THAT THEY UNDERSTAND YOUR INSURANCE OBLIGATIONS  
BEFORE THEY ISSUE YOUR CERTIFICATE OF INSURANCE**

ITEM #3

3. To take such action as the meeting may determine, upon the request from the Town Clerk, to approve the Agreement between the Town of Westport and Avenu Insights & Analytics, LLC as it relates to microfilm storage services.





## WESTPORT, CONNECTICUT

PATRICIA H. STRAUSS  
TOWN CLERK  
REGISTRAR OF VITAL STATISTICS

December 16, 2020

Hon. James S. Marpe, First Selectman  
Town of Westport  
110 Myrtle Ave  
Westport, CT 06880

RE: Agreement for Microfilm Storage

Dear Mr. Marpe:

Attached is the agreement with Avenu Insights & Analytics, LLC for Board of Selectmen approval. This agreement covers the State-mandated requirement to provide back-up security (microfilm) to many essential town records and to store the microfilm at an off-site facility in accordance with Section 11-8(a) of the CT General Statutes as part of a larger records management program established for the preservation of essential records of the Town. Examples of the collections include land records, maps and surveys, foreclosure registrations, vital records, trade names, military discharge papers, meeting minutes and more.

Avenu has gone through many business name changes over the years but has consistently provided the necessary service to fulfill these state requirements. For over 25 years, this expense has been funded by an existing line item in the Town Clerk's budget. The average annual amount for the services is \$7,000. Avenu now requires to be under contract in order to perform services.

Please consider this request at the December 23<sup>rd</sup> Board of Selectman's meeting. If you have any questions, please do not hesitate to call.

Sincerely,

A handwritten signature in blue ink that reads "Patricia H. Strauss".

Patricia H. Strauss  
Town Clerk

Attachments

Cc: Eileen Lavigne Flug, Assistant Town Attorney



## Agreement for Microfilm Storage

Avenu Insights & Analytics, LLC  
Town of Westport, Connecticut

This agreement for microfilm storage services ("Agreement") is made by and between **Avenu Insights & Analytics, LLC**, 8600 Harry Hines Blvd., Suite 300, Dallas, TX 75235 ("Avenu"), and the **Town of Westport**, a government entity in the State of Connecticut ("Client"), 110 Myrtle Avenue, Westport, CT 06880. Avenu and Client (each individually a "party" and collectively the "parties") agree as follows:

- 1. SERVICES** Avenu agrees to provide to Client the microfilm storage services ("Services") described in the Statement of Work, which is attached to and incorporated in this Agreement as Schedule A, in accordance with the terms and conditions set forth in this Agreement.
- 2. TERM** This Agreement will become effective on April 6, 2020 ("Effective Date") and will continue through April 5, 2025 ("End Date"), unless otherwise extended or terminated by the parties in accordance with the provisions of this Agreement ("Term"). At the end of the Term, the parties may agree in writing to extend this Agreement for additional one (1) year periods ("Extended Term"), subject to the termination provisions of this Agreement.
- 3. PAYMENT** Client agrees to pay Avenu for the Services, including any partially completed work performed to the date of termination for loss of funding or any other reason except default by Avenu. Avenu will submit an invoice to Client for each payment due, and Client agrees to pay each invoice within thirty (30) calendar days after receipt of the invoice.
- 4. TAXES** If Client is by law exempt from property taxes or sales and use taxes, those taxes will not be included in invoices submitted to the Client under this Agreement. Avenu may be considered a limited agent of Client for the sole purpose of purchasing goods or services on behalf of Client without payment of taxes from which Client is exempt. If Avenu is required to pay taxes by determination of a proper taxing authority having jurisdiction over the products or services provided under this Agreement, Client agrees to reimburse Avenu for payment of those taxes.
- 5. DELIVERY AND ACCEPTANCE** Client will have ten (10) business days after notification by Avenu that a portion of the Services are complete and ready for acceptance to inspect and accept or decline that portion of the Services. If Client declines to accept all or any part of the Services, Client will provide Avenu a written description of the deficiencies and a reasonable opportunity to cure those deficiencies. Client will indicate acceptance of the Services in writing. However, if Client fails to accept or decline the Services and deliver a written list of deficiencies to Avenu within ten (10) business days after receipt of notice of delivery, the Services will be deemed to have been accepted by Client.
- 6. CONFIDENTIALITY** With respect to Client business information that is confidential and clearly designated as confidential ("Client Confidential Information"), Avenu will keep that information confidential by using the same degree of care and discretion that is used with information that Avenu regards as confidential. Avenu will not be required to keep confidential any information that: (a) is or becomes publicly available; (b) is already lawfully possessed by Avenu; (c) is independently developed by Avenu outside the scope of this Agreement without reliance on Client Confidential Information; or (d) is rightfully obtained from third parties. Avenu is not required to keep confidential any ideas, concepts, methodologies, inventions, discoveries, developments, improvements, know-how, or techniques developed



by Avenu while providing the Services. Avenu and Client agree to use confidential information only for the purposes of this Agreement and on a strictly need-to-know basis, and will not disclose confidential information to any third party (other than as permitted under this Agreement) or to the employees of the other party, Avenu subcontractors, or permitted consultants engaged by the Client with the prior written consent of Avenu.

**7. OWNERSHIP, USE, AND RETURN OF DATA** All information, records, documents, files, data, and other items relating to the business of Client, whether prepared by Client or Avenu or otherwise coming into the possession of Avenu in connection with performing the Services or otherwise during the Term will remain the exclusive property of Client.

**8. ACCESS TO FACILITIES AND INSURANCE** Client agrees to provide Avenu with reasonable access to Client facilities for provision of Services, as well as secure storage areas for materials, equipment, and tools, if required. If Avenu performs any of the Services on Client premises, Avenu agrees to maintain standard insurance coverage in accordance with its corporate policy. Upon request, Avenu will provide evidence of coverage on a standard ACORD form certificate of insurance.

**9. FORCE MAJEURE** Neither party shall be responsible for delays or failures in performance as a result of limitations or problems inherent in the use of the Internet and electronic communications; force majeure events, including but not limited to Acts of God, fire, flood, earthquake, weather, climate change, elements of nature, war, terrorism, civil disturbance, labor disruptions or strikes, quarantines, embargoes, or other governmental action, or cause beyond the reasonable control of a party.

**10. WARRANTIES** Avenu warrants that the Services will be performed in a professional and workmanlike manner. If third-party hardware or commercial software is furnished under this Agreement, then Avenu will, to the maximum extent allowable by third-party vendors, pass-through to Client all warranties for materials furnished under this Agreement. Avenu will provide only the warranties and exchange policies for any defective items that are offered by the manufacturers. **THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE MADE TO CLIENT EXCLUSIVELY AND AVENU MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SERVICES PROVIDED. AVENU EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

#### **11. LIMITATIONS OF LIABILITY**

**NEITHER PARTY WILL BE LIABLE, UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT EVEN IF THOSE DAMAGES ARE ATTRIBUTED TO BREACH OF THIS AGREEMENT, TORT, NEGLIGENCE, OR OTHER CAUSE OF ACTION. THE PARTIES AGREE THAT THIS LIMITATION SHALL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF NON-DIRECT DAMAGES OR IF, UNDER APPLICABLE LAW, NON-DIRECT DAMAGES ARE CONSIDERED TO BE DIRECT DAMAGES. EXCEPT FOR AMOUNTS EXPRESSLY DUE AND PAYABLE TO AVENU UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY FOR ANY CLAIMS, PENALTIES OR DAMAGES, WHETHER IN CONTRACT, TORT, OR BY WAY OF INDEMNIFICATION, IN AN AMOUNT EXCEEDING THE FEES OR OTHER CHARGES PAID BY CLIENT TO AVENU DURING THE THREE (3) MONTHS PRECEDING THE CLAIM.**

**12. TERMINATION FOR BREACH OR DEFAULT BY AVENU** If Avenu materially breaches any of the terms and conditions set forth in this Agreement or fails to perform the obligations set forth in this Agreement and fails to cure the breach or failure within forty-five (45) calendar days (or any longer period stated in the notice) after receipt of written notice specifying the basis for the breach or failure to perform,



Client may terminate this Agreement. Termination by Client will be effective upon delivery of final payment to Avenu of all sums due under this Agreement to the effective date of the termination.

**13. TERMINATION WITHOUT CAUSE** Notwithstanding any other provision or requirement of this Agreement, either party may terminate this Agreement at any time without cause by giving not less than ninety (90) calendar days prior written notice to the other party.

**14. TERMINATION OR SUSPENSION OF WORK FOR LOSS OF FUNDING** This Agreement is subject to termination for convenience upon not less than thirty (30) days written notice to Avenu if Client has failed to receive funds for the continued procurement of the Services after every reasonable effort has been made by Client to secure the necessary funding and if no substitute arrangement is made by Client to obtain the same or similar Services from another source. If this Agreement is terminated before the End Date, Avenu will invoice Client for work performed to the End Date, and Client agrees to pay Avenu for those Services. Under no circumstances will Avenu be required to perform Services in the absence of available funding.

**15. NOTICES TO PARTIES** Unless otherwise specified in this Agreement, all notices, requests, or consents required to be given in writing under this Agreement shall be hand delivered, delivered by overnight delivery service, or mailed (certified mail, postage prepaid).

**To Avenu:**

**Avenu Insights & Analytics, LLC**  
8600 Harry Hines Blvd., Suite 300  
Dallas, TX 75235

Attention: Contracts Department

**To Client:**

**Town of Westport**  
110 Myrtle Avenue  
Westport, CT 06880

Attention: Patricia Strauss, Town Clerk

**With a copy to:**

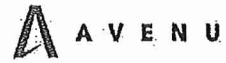
**Avenu Insights & Analytics, LLC**  
5860 Trinity Parkway, Suite 120  
Centreville, VA 20120

Attention: Contracts Department

**16. ASSIGNMENT AND SUBCONTRACTING** This Agreement is binding on the parties and their successors and assigns. Avenu may assign or otherwise transfer this Agreement and any rights, duties, or obligations under this Agreement to a corporate parent, subsidiary, or affiliate of Avenu. Any other attempt to make an assignment without prior written consent of the other party will be void. Avenu may provide for the delivery of all or part of the Services through the use of subcontractors. Avenu will notify Client of work being performed by any subcontractor that performs work on the premises of Client and shall ensure that the insurance requirements that apply to Avenu under this Agreement apply to and are complied with by each subcontractor.

**17. GOVERNING LAW** This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Virginia, without reference to the principles of conflict of laws.

**18. NON-SOLICITATION AND NON-HIRE** Client shall not, without the prior written consent of Avenu knowingly solicit, recruit, hire, or otherwise employ or retain any employee of Avenu that is performing the Services or has performed any of the Services under this Agreement during the Term of this Agreement. This restriction includes former employees of Avenu who have performed any of the Services during the term of this Agreement during a period of one (1) year after that employee is no longer employed by Avenu. Because actual damages are difficult to determine if Client breaches the non-solicitation obligations under this Section, the parties agree that in lieu of an award of actual damages and not as a penalty, Avenu shall be entitled to, and Client shall pay to Avenu as the sole and exclusive remedy for



breach, liquidated damages of two (2) times the salary and bonus target employee at the time his or her employment with Avenu. Nothing in this Section shall waive the right of Avenu to seek injunctive relief to compel compliance by a current or former employee with the obligations of a former employee not to use or disclose that any confidential or proprietary information of the former employer. The non-solicitation provisions of this Section shall not restrict in any way the right of either party to solicit or recruit generally in the media, and shall not prohibit either party from hiring an employee or former employee of the other party who responds to any public advertisement or who otherwise voluntarily applies for hire without having been personally solicited or recruited by the hiring party. The provisions of this Section shall not prohibit either party from hiring employees of the other party if the status of the other party as a viable business entity so declines as to make it unlikely the party could retain the services of its employees.

**19. ENTIRE AGREEMENT** The contents of this Agreement (including the Statement of Work) constitute the entire understanding and agreement between the parties and supersede any prior agreements, written or oral, that are not specifically referenced and incorporated in this Agreement. The terms and conditions of this Agreement shall not be changed or modified except by written agreement signed by both parties.

**IN WITNESS WHEREOF**, the undersigned authorized representatives of Avenu and the Client have executed this Agreement.

**Avenu Insights & Analytics, LLC**

**Town of Westport, Connecticut**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

## SCHEDULE A

### STATEMENT OF WORK

This Statement of Work is incorporated in the Agreement for Microfilm Storage (“Agreement”) by and between **Avenu Insights & Analytics, LLC** (“Avenu”) and the **Town of Westport** (“Client”).

#### A. SCOPE OF SERVICES

##### AVENU RESPONSIBILITIES

Avenu will perform the following Services for Client:

1. Avenu will provide microfilm storage for Client during the Term.
2. Avenu will store additional microfilm sent by Client.
  - Upon receipt from Client, Avenu will test microfilm for quality and storability.
  - Avenu will provide an audit report of all microfilm received from Client during the Term.
3. Avenu and Client will use and update an inventory report to track stored microfilm rolls.
4. If Avenu creates microfilm at Client’s request during the Term, Avenu will create the microfilm, place the microfilm in storage and update inventory log of microfilm.
5. Avenu will perform reprint services of lost or destroyed pages from record books, up to 50 pages, upon written request from Client. Avenu will ship reprinted documents to Client within fifteen (15) business days of Client request.
  - Avenu will retrieve microfilm from storage.
  - Avenu will test microfilm for reprint quality.
  - Avenu will reprint requested document(s) and ship to Client.
  - Avenu will return microfilm to storage after processing.
6. Avenu will perform 16 mm diazo microfilm duplication upon written request from Client. Avenu will ship duplicated microfilm roll(s) to Client within fifteen (15) business days of Client request.
  - Avenu will retrieve microfilm from storage.
  - Avenu will duplicate requested microfilm roll(s) and ship to Client.
  - Avenu will return microfilm to storage after processing.

##### CLIENT RESPONSIBILITIES

1. Client will assign a Client employee who is authorized to request reprint and duplication services and make decisions regarding microfilm storage and retrieval under this Agreement.
2. Client will provide all reprint and duplication requests in writing with Volume/Book/Page and any pertinent information necessary to identify requested documents.



3. Client will work with Avenu to identify and resolve documents or microfilm that require special handling.
4. Client will immediately notify Avenu in writing of any document reprints that require reworking and provide Avenu with Volume/Book/Page and any pertinent information necessary to identify the reprints in question.
5. If Client would like Avenu to store additional rolls of film, Client is responsible for shipping of microfilm to Avenu.
6. Client will be responsible for all freight charges for microfilm and reprints shipped from Avenu to Client.

**B. ACCEPTANCE AND TESTING**

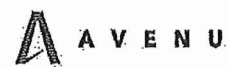
1. Client will have ten (10) business days after receipt of microfilm or reprints (“Deliverables”) to inspect and accept the Deliverables or decline to accept the Deliverables.
2. If Client declines to accept all or any part of the Deliverables, Client will provide Avenu a written description of the deficiencies and a reasonable opportunity to cure those deficiencies.
3. Client will indicate acceptance of the Deliverables in writing. However, if Client does not accept the Deliverables and deliver a written list of deficiencies to Avenu within ten (10) business days after delivery, the Deliverables will be deemed to have been accepted by Client.
4. Client understands and agrees that minor defects (i.e., defects that do not inhibit the Deliverables from operating in substantial accordance with Avenu specifications) shall not constitute grounds for declining to accept the Deliverables.

**C. PAYMENT AND RATES**

Client will pay Avenu based on the following price schedule.

Services	Price
Microfilm Storage	<p>Client acknowledges and agrees that Avenu has performed the microfilm storage services for the term 3/1/2019 – 2/28/2020, for which compensation is now due. <b>Avenu will send a one-time invoice to cover the current quantity in storage.</b></p> <p>As of April 6, 2020 (the Effective Date) Avenu is storing 1,475 rolls [\$1.45 per roll per year] of microfilm for Client. The parties may agree to increase or decrease this amount during the Term. Client will be invoiced annually in March during the Term and will pay Avenu based on the number of rolls of microfilm Avenu is storing for Client on March 1 of each year. The minimum annual spend for microfilm storage services is \$40.00.</p>

**Microfilm Storage Agreement**



Microfilm Retrieval (per request)	\$21.50 for first roll and \$1.75 for each additional roll requested
Reprint of documents from microfilm	\$1.25 per page
Microfilm Creation	\$0.05 per frame
16mm Diazo Microfilm Duplication	\$30.00 per roll

#### ITEM #4

4. To take such action as the meeting may determine, upon the request from the Director of Public Works, to approve the Agreement between the Town of Westport and RACE Coastal Engineering LLC, for Design, Permitting and Construction Administration Professional Services for the rehabilitation of the Old Mill walkway and tide gate structures.



AGREEMENT FOR DESIGN, PERMITTING, AND CONSTRUCTION ADMINISTRATION  
PROFESSIONAL SERVICES

This Agreement for Design, Permitting, and Construction Administration Professional Services (“Agreement”) is entered into as of the \_\_\_\_\_ day of December, 2020, by and between **RACE COASTAL ENGINEERING, LLC**, with an address at 611 Access Road, Stratford, CT 06615 (“**RACE**”) and the **TOWN OF WESTPORT**, Connecticut, located at 110 Myrtle Avenue, Westport, CT 06880 (“**Client**”).

WHEREAS, the Client issued a Request for Proposals entitled “Request for Proposals, RFP 21-005T, For the Design, Permitting, and Construction Administration for Rehabilitation of the Old Mill Walkway and Tide Gate Structures” as amended by Addendum #1 (the “RFP,” a copy of which is attached hereto as Attachment A); and

WHEREAS, RACE submitted a Proposal Response dated September 24, 2020 (the “RACE Response,” a copy of which is attached hereto as Attachment B); and

WHEREAS, the Client selected RACE to perform the work as described in the RFP and the RACE Response;

NOW THEREFORE, in consideration of the mutual agreements provided herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, **RACE** and Client agree as follows:

**1. SCOPE OF SERVICES:**

Effective as of the date first above written, **RACE** will provide to Client the services described in the RFP RACE Response as Task 1, Task 2 and Task 3 (the “Services”). The Services shall be provided in a timely manner according to the Project Schedule provided in the RACE Response, as such schedule may be amended from time to time with written approval of the Director of Public Works of the Client.

**2. ESTIMATED FEES:**

**Basic Services**

The fees for the Basic Services and Additional Services shall be as provided in the RACE Response under the “Fee Proposal” for Tasks 1, 2 and 3. There is no Retainer Fee payable by the Client to **RACE** as a condition to commence service.

**3. GENERAL TERMS AND CONDITIONS:**

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

**Payment Terms** All reimbursable expenses shall be invoiced at direct cost plus 10% overhead expense. Reimbursable expenses shall include such expenses as: overnight deliveries; courier services; reproduction of documents; shipping and mailing expenses; and any other disbursement including, without limitation, application fees made on behalf of the Client. While the Lump Sum Fee for Basic Services is a fixed amount that will not change, the total fee payable, projected prior to commencement of services, if stated, shall be a reasonable estimate subject to change due to additional reimbursable expenses and Additional Services. The total fee for Basic Services and Additional Services shall not exceed 10% over the Project Total Lump Sum Fees of \$116,120 without prior written approval of the Client. Fees

for Additional Services are on an hourly basis, at the rates shown above under 2018 Additional Services Rate Schedule.

Invoices for professional services shall be submitted, at the option of the Engineer, either upon completion of such services or on a monthly basis. Invoices shall be payable within thirty (30) days after the date of the invoice. In the event that an undisputed amount of the account remains unpaid in full, ninety (90) days after initial billing, the Client shall be responsible for all costs of collection including, without limitation, reasonable attorney’s fees.

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



**Standard of Care** The Standard of Care as defined under this Agreement shall mean the rendering of services with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances, and do so in a reasonably careful and prudent manner.

**Flow of Work** This Agreement for engineering services is based upon the assumption that the Client will provide all required information in a timely manner. **RACE** will not be expected to proceed with portions of its work until necessary information to be provided by the Client and requested in writing by **RACE** has been provided. If the Client requests **RACE** to perform work out of sequence or based upon preliminary information, then additional time required to perform work under these circumstances or to revise work based on revised Project data or criteria supplied by the Client may be billable as Additional Services.

**Permits** This Agreement is limited to the preparation of regulatory permit applications normally required by law and specifically excludes the preparation of applications for building permits, utility installation, and roadway construction. Such services, if required, shall be compensated for as *Additional Services*. Permit fees and the cost of posting public notices in local publications, etc., shall be the responsibility of the Client.

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

**Ownership of Documents** All documents produced by **RACE** under this Agreement, such as drawings, specifications, and computer files, other than those provided to be used publicly by Client in bid documents, presentations, and as otherwise contemplated under this Agreement, and documents that are or become public records subject to the Connecticut Freedom of Information Act, are instruments of service and shall remain the property of **RACE** and may not be altered or used by the Client for any other endeavor without the written consent of **RACE**.

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

**Existing Conditions** Information on the existing structures have been obtained from existing drawings, preliminary site visits, and other documents. This Agreement is based upon the assumption that the construction of the existing structures was done in strict accordance with these drawings or with common construction standards and that the existing structural elements are, unless noted herein, in sound

condition and are fully permitted with all required regulatory agencies. No attempt has been made to verify the integrity of the existing structures other than what will be explicitly shown on our drawings, and we assume no responsibility for its condition if it should turn out not to be adequate. It shall be the responsibility of the contractor for the construction of the new structure to report to **RACE** immediately any discrepancies and any evidence of impairment of structural strength found during the course of construction.

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

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

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

**Discovery of Unanticipated Hazardous Materials** Hazardous materials or certain types of hazardous materials may exist where there is no reason to believe they could or should be present. **RACE** and the Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition which may require Additional Services. The Client and **RACE** also agree that the discovery of unanticipated hazardous materials may make it necessary for **RACE** to take immediate measures to protect human health and safety, and/or the environment. **RACE** agrees to notify the Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered, and with Client's written approval, **RACE** shall take any and all measures that in **RACE**'s professional opinion are justified to preserve and protect the health and safety of **RACE**'s personnel and the public, and/or the environment, and the Client agrees to compensate **RACE** for the additional cost of such work as Additional Services.

**Insurance and Indemnity** **RACE** shall obtain the insurance coverages described below and maintain such coverages for the life of 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 Client from claims that may arise out of or result from **RACE**'S obligations under this Agreement or from the obligations of any subcontractor or any other person or entity directly or indirectly employed by **RACE** or by anyone for whose acts **RACE** may be liable. **RACE** must require that all sub-contractors, agents and assigns procure and maintain sufficient insurance protection. **RACE** shall not commence work under this Agreement until all insurance required of **RACE** has been procured and approved by the Client.



For each policy required by this Agreement, **RACE** shall, before the execution of this Agreement by the Town, provide Client with certificates of insurance. **RACE** 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 Client according to policy provisions.

**(a) Workers Compensation:**

**RACE** shall provide 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. Full compliance with the United States Longshoremen's and Harbor Workers' Compensation Act and the Jones Act is required where applicable.

**(b) Commercial General Liability Insurance:**

**RACE** shall provide commercial general liability insurance including products and completed operations and including XCU coverage if applicable. 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 three years after the completion of the work.

The policy shall name the Town of Westport 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 Client. The policy shall contain a waiver of subrogation in favor of Client. 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 Client and **RACE**. A per project aggregate limit of liability endorsement shall apply for any construction contract. Deductible and self-insured retentions shall be declared and are subject to the approval of Client.

**(c) Commercial Automobile Insurance:**

**RACE** 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 Client as an additional insured and provide a waiver of subrogation.

**(d) Umbrella or Excess Liability Insurance:**

**RACE** 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 \$5,000,000 each occurrence and \$5,000,000 in the aggregate. Client reserves the right to require higher limits of umbrella or excess liability coverage depending on the scope of the agreement.

**(e) Errors & Omissions Insurance:**

**RACE** shall provide errors & omissions insurance for liability resulting from the negligent performance of professional duties or operations. Such policy shall contain limits of liability in the amount of \$1,000,000 each claim and \$3,000,000 in the aggregate. The policy shall name Client as an additional insured and provide a waiver of subrogation.

**(f) Indemnity and Hold Harmless:**

**RACE** shall indemnify and hold harmless the Client, its agents, employees, officials, and representatives from and against any and all losses, claims, actions, costs and expenses (including but not limited to attorneys' fees and court costs), judgments, subrogations or other damages resulting from any personal injury or property damage arising out of or in any way associated with **RACE**'s actions or inaction in connection with this Agreement.

**Delivery of Electronic Files** In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by **RACE**, the Client agrees that all such electronic files are instruments of service of **RACE**, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights. **RACE** hereby authorizes and licenses the Client to use, copy, distribute, prepare derivative works from, and modify the drawings, reports and data and electronic files as needed in the Client's discretion for the Project. The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer these electronic files to others other than for the Project without the prior written consent of **RACE**. The Client further agrees to waive all claims against **RACE** resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than **RACE**. The Client and **RACE** shall agree upon the format for any electronic files furnished by either party prior to the initiation of work. Any changes to the electronic specifications by either the Client or **RACE** are subject to review and acceptance by the other party. Additional services by **RACE** made necessary by changes to the electronic file specifications shall be compensated for as Additional Services. Electronic files furnished by either party shall be subject to an acceptance period of thirty (30) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. Acceptance of any electronic file shall not constitute a waiver of any claim for tort, breach of contract or otherwise, or any claim described in the Indemnity and Hold Harmless provision of this Agreement. The provisions of this paragraph shall not apply to any drawings, reports or data in any electronic or other format that are provided by **RACE** to be used publicly by Client in bid documents, presentations, and as otherwise contemplated under this Agreement, and documents that are or become public records subject to the Connecticut Freedom of Information Act.

The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by **RACE** and electronic files, the signed or sealed hard-copy construction documents shall govern. Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by **RACE**, and **RACE** makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall **RACE** be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files other than for the Project, unless those damages are a result of an error or omission which is shown on both the hard-copy documents and the electronic files.

**Effective Date; Termination**



- (a) This Agreement shall be deemed effective as of the date first above written.
- (b) A party seeking to terminate this Agreement for material breach shall notify the other party in writing of the nature of the breach and the other party shall have thirty (30) days from the receipt of such notice to cure or otherwise eliminate such cause. If the other party does not remedy the breach, to the reasonable satisfaction of the non-breaching party, this Agreement shall terminate at the end of the thirty (30) day period.
- (c) If this Agreement is terminated by the Client during the course of performance of the work, **RACE** shall be paid within seven (7) days of such termination the reasonable value of the services performed during the period prior to the effective date of termination.
- (d) In the event of termination of this Agreement by either party, (i) RACE shall continue to render the Services as provided in this Agreement until the effective date of the termination; (ii) all finished and unfinished designs, plans, reports, lists, specifications, RFP packages, photographs, drawings, surveys, assessments, drafts, and any other files and documentation, prepared by RACE in connection with the Services shall be delivered to the Client; (iii) RACE shall be paid by the Client, in accordance with the payment provisions of this Agreement, for all Services

properly completed by RACE as of the effective date of the termination; and (iv) upon such payment, the Client shall have no further liability to RACE under this Agreement.

- (e) This Agreement is subject to the appropriation and disbursement of funds by the Client's funding bodies sufficient for the payment for the Services under this Agreement. The Client shall have the right to terminate this Agreement, in whole or in part, without penalty to the Client, in the event that sufficient funds to provide for Client's payment(s) under this Agreement are not appropriated, not authorized or not made available or such funding has been reduced. In the event that this Agreement is subject, in whole or in part, to the appropriation and disbursement of Federal and/or State funds and such funds are not appropriated or are not disbursed to the Client, the Client shall have the right to terminate this Agreement in whole or in part without penalty to the Client. The Client will provide 30-days' prior written notice of non- appropriation to RACE.
- (f) If, prior to termination of this Agreement, any work by RACE during any phase of the work is suspended in writing by Client in whole or in part for more than three (3) months or abandoned after written notice from the Client, **RACE** shall be paid for such services performed prior to receipt of such notice.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as the date first above written.

**RACE COASTAL ENGINEERING, LLC**

**TOWN OF WESTPORT**

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Matthew Rakowski, P.E.  
Project Manager

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James S. Marpe  
First Selectman

ITEM #5

5. To take such action as the meeting may determine, upon the request from the Director of Public Works, to approve an Agreement between the Town of Westport and CAI Technologies of Littleton New Hampshire, for Technical Support Services associated with integration of the Town's Geographic Information System into the Accela Civic Platform.

**FIRST AMENDMENT  
TO  
SOFTWARE CONSULTING SERVICES AGREEMENT**

This First Amendment to Software Consulting Services Agreement (“First Amendment”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_ between Cartographic Associates, Inc., doing business as CAI Technologies, a New Hampshire corporation with its office located at 11 Pleasant Street, Littleton, NH 03561, hereinafter called “CAI,” and the Town of Westport, located at 110 Myrtle Avenue Westport, CT 06880, hereinafter called the “Town.”

RECITALS

WHEREAS, CAI and the Town are parties to that certain Software Consulting Services Agreement dated as of December 3, 2018 (the “Consulting Agreement”); and

WHEREAS, CAI and the Town are parties to that certain CIS Internet Services Annual Maintenance Agreement for the Town of Westport, CT dated June 4, 2020 (the “Annual Maintenance Agreement”); and

WHEREAS, the parties hereto desire to amend the term and termination provision of the Consulting Agreement so that the agreement’s term begins as of December 3, 2018 and is deemed to have automatically renewed every year, and will going forward automatically renew every year, unless the Town terminates it with 30 days’ prior written notice; and

WHEREAS, the parties hereto also desire to add additional services to Exhibit 1, the Scope of Work (“SOW”), of the Consulting Agreement; and

WHEREAS, the parties hereto desire to incorporate key provisions of the Annual Maintenance Agreement into the Consulting Agreement and then terminate the Annual Maintenance Agreement;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto agree as follows:

1. **Amendments to the Consulting Agreement.** The Consulting Agreement is hereby amended as follows:

- a) The Consulting Agreement is hereby deemed to have been renewed by the parties for additional one-year terms effective as of December 3, 2019 and December 3, 2020.
- b) Effective as of December 3, 2020, Section 4.1 (Term and Renewal) of the Consulting Agreement is hereby replaced in its entirety with the following:

4.1 Term and Automatic Renewal; Fee Increases; Town Data

This Agreement shall enter into force as of December 3, 2018 and shall remain in effect until it is terminated in accordance with this Section 4. The Town may terminate this Agreement for any reason by delivering to CAI written notice of termination at least thirty (30) days prior to the effective date of such termination. The annual fees provided in the SOW shall not be



changed without CAI's providing the Town with at least a year's notice of such change. In no event shall any annual fees increase by more than three percent (3%) over the prior year's fees without the consent of the Town. In the event of any termination of this Agreement, CAI shall promptly return to the Town in a commercially acceptable form all of the Town's data, including without limitation all GIS data and attribute data hosted or held by CAI, so that the Town can transfer such data to another hosting platform.

- c) Effective as of June 4, 2020, the provisions of Sections I (Summary) and II (Client Responsibilities) of the Annual Maintenance Agreement are hereby incorporated by reference into the SOW in the Consulting Agreement as additional obligations. Such terms are intended to, and shall be deemed to, supplement and not reduce the respective obligations of the parties under the Consulting Agreement.
- d) Effective immediately, the "Additional Platform Functionality" provision on page 15 of the SOW is hereby amended to add thereto the following provision:

D. Automatic Updating of GIS Data and Attribute Data on Accela, and Additional GIS Consulting Work

CAI shall design and create script to adjust the Accela service so that it reads from the same Geographical Information System ("GIS") data sources as AxisGIS, so that the Layer Refresh tool uploads are automatically reflected in Accela in real time.

CAI shall develop a nightly script that will combine the current parcels with the current assessment to create a piled-up version of parcels with one current owner for each polygon, and use that data in the Accela service.

CAI shall add new layers to the GIS on the Accela service as requested by, and at the direction of, the Town's Director of Public Works or his designee.

CAI shall perform such other GIS consulting work as may be requested in writing by the Town's Director of Public Works.

With the exception of required field work that may include GPS data collection, the services in this Section D shall be performed off-site using telephone, email and remote desktop communication.

CAI shall utilize the most current version of ESRI ArcGIS software to perform all services and shall deliver all data developed and/or modified as part of this Agreement to the Town in a manner consistent with professional GIS consulting standards.

Any GIS data developed as part of this Agreement shall be owned by the Town. CAI shall not release or distribute data without the prior written consent from the Town.

- e) Effective immediately, the "Town Responsibilities" provision on page 16 of the SOW is hereby amended to add thereto the following provision:

The Town shall appoint a contact person to serve as project liaison between the Town and CAI

for Section D of the Additional Platform Functionality.

- f) Effective immediately, the “Schedule” provision on page 17 of the SOW is hereby amended to add thereto the following provision:

CAI shall commence performing Section D of the Additional Platform Functionality upon the date of delivery of a fully executed First Amendment to Software License Agreement. CAI shall compete and deliver the work described in the first three sentences of such Section D to the Town within one (1) year after such date. Other work to be performed under such Section shall be competed according to work schedules agreed to in writing by the Town’s Director of Public Works.

- g) Effective immediately, the “Cost and Payment Terms” provision on page 18 of the SOW is hereby amended to add thereto the following provision:

CAI shall perform Section D of the Additional Platform Functionality on a time and materials cost basis using the following rate schedule. The total amount invoiced by CAI under this Agreement for the work of Section D of the Additional Platform Functionality shall not exceed \$10,000.00 (TEN THOUSAND DOLLARS) per year. All time for such work shall be invoiced in quarter-hour increments. Invoicing for such work shall be done monthly based on work completed. Payment for such work shall be made within 30 days of invoicing.

TIME & MATERIALS RATE SCHEDULE	
Position / Title	Standard Hourly Rate
Project Manager	\$185
Solutions Architect	\$225
Senior GIS Programmer	\$155
GIS Programmer	\$130
Senior GIS Analyst	\$120
GIS Analyst	\$100
GIS Technician	\$ 80
Mapping Specialist	\$ 90
Administration	\$ 75
GPS Data Collection	\$125
Staff Travel Time	\$ 70

2. **Termination of the Annual Maintenance Agreement.** Except for the ongoing effectiveness of Sections I (Summary) and II (Client Responsibilities) as provided in Section 1(b) of this First Amendment, the Annual Maintenance Agreement is hereby deemed terminated as of June 4, 2020.

3. **Other Terms Remain In Effect.** Except as specifically modified by this First Amendment, the terms and conditions of the Consulting Agreement shall remain in full force and effect and shall be complied with by the Town and CAI, respectively.

4. **Counterparts and Electronic Signatures.** This First Amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and all of which when taken together shall constitute one and the same First Amendment. The Parties agree that this First

Amendment may be transmitted between them or their respective attorneys by electronic mail and, upon evidence of receipt of same, shall constitute delivery of this First Amendment. The parties intend that electronic signatures or signatures indicated on a PDF constitute original signatures and that a First Amendment containing the signatures (original, electronic or on a PDF) of both of the parties is binding on the parties hereto once sent via electronic mail or delivered to the other party hereto.

5. **Miscellaneous**. Except as otherwise provided in this First Amendment, capitalized words and phrases used in this First Amendment shall have the meanings ascribed to them in the Consulting Agreement. This First Amendment shall be binding upon the successors and permitted assigns of the parties hereto. The Recitals above are to be considered part of this First Amendment. This First Amendment shall not be effective until signed by the Town's First Selectman.

IN WITNESS WHEREOF, each party hereto has executed this First Amendment as of the date first above written, by their duly authorized officers.

TOWN OF WESTPORT

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

CAI TECHNOLOGIES

By: \_\_\_\_\_  
Timothy Fountain, GISP  
Vice President



ITEM #6

6. Acting in its capacity as the Water Pollution Control Authority, to approve the sanitary sewer connection for property located at 28 Narrow Rocks Road, contingent upon compliance with the WPCA Collection System Supervisor's letter of December 16, 2020.



## DEPARTMENT OF PUBLIC WORKS

TOWN HALL, 110 MYRTLE AVE.  
WESTPORT, CONNECTICUT 06880  
(203) 341 1120

December 16, 2020

Mr. James S. Marpe  
First Selectman  
110 Myrtle Avenue  
Westport, CT 06880

**Re: Residential Sanitary Sewer Connection  
#28 Narrow Rocks Road  
List #12193, Assessor Map #C05, Tax Lot #129  
Elizabeth Solovay – Owner**

Dear Mr. Marpe,

This office is in receipt of correspondence dated December 16, 2020 to the Water Pollution Control Authority, requesting approval for the connection of an existing single-family residence to the public sanitary sewer system. Whereas the existing sanitary sewer terminates on Narrow Rocks Road, approximately eighty feet (80ft) from the subject property, the owner proposes to connect to the sewer by means of a gravity connection to the terminus manhole within Narrow Rocks Road at the intersection with Mayflower Parkway. This sewer connection request requires the approval of the Authority and the assignment of an appropriate benefit assessment before a connection permit can be issued by the Department of Public Works.

It is the recommendation of this office that the Water Pollution Control Authority approve the connection request subject to the following stipulations:

- 1) All construction shall be at the expense of the property owners.
- 2) The owner's drain-layer shall obtain a "Sanitary Sewer Connection Permit" and a "Road Opening Permit" from the Westport Department of Public Works.
- 3) All plans and installation shall be subject to approval by this office and shall be in conformance with the current Town of Westport Water Pollution Control Authority Regulations, except as otherwise waived by the Authority.
- 4) The property shall be subject to a sanitary sewer benefit assessment as if it were included under Sanitary Sewer Contract No. 19, amounting to \$2,033.00 for each unit assessed. For the subject single-family residence, it is recommended that one (1) unit, in the amount of \$2,033.00, be assessed.

December 16, 2020

**Re: Residential Sanitary Sewer Connection  
#28 Narrow Rocks Road**

- 5) There shall be no credits to the owners.
- 6) A charge of \$250.00 shall be levied against the property should the owner subsequently wish to rescind the sanitary sewer connection approved by the Authority.

Respectfully,

*Bryan H Thompson*

Bryan H. Thompson  
WPCA Collection System Supervisor

CC: Director of Planning and Zoning  
Director of Westport/Weston Health District



**Thompson, Bryan**

---

**Subject:** FW: Sewer access request

**From:** Liz Solovay <lizsolovay@gmail.com>  
**Sent:** Wednesday, December 16, 2020 11:22 AM  
**To:** Selectman's Office <selectman@westportct.gov>  
**Cc:** Thompson, Bryan <BTHOMPSON@westportct.gov>  
**Subject:** Sewer access request

Elizabeth Solovay  
28 Narrow Rocks Road  
Westport, CT 06880

December 16, 2020

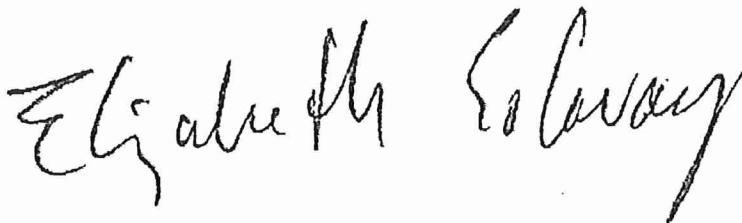
Hon. James S. Marpe,  
First Selectman  
110 Myrtle Ave, Room 310  
Westport, CT 06880

Re: Sanitary Sewer Connection Request

Dear Mr. Marpe:

As the owner of above referenced property, I am requesting approval from the Board of Selectman in their capacity as the Water Pollution Control Authority to connect my residence to the Town Sanitary Sewer.

Kind Regards,



Elizabeth Solovay

cc: Bryan Thompson  
[bthompson@westportct.gov](mailto:bthompson@westportct.gov)



**Liz Solovay**  
Lice Treatment Center®  
888.542.3292 | 203.993.0310 | [Liz@LiceTreatmentCenter.com](mailto:Liz@LiceTreatmentCenter.com) | [www.LiceTreatmentCenter.com](http://www.LiceTreatmentCenter.com)

**Francis, Eileen**

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**From:** Liz Solovay <lizsolovay@gmail.com>  
**Sent:** Wednesday, December 16, 2020 11:22 AM  
**To:** Selectman's Office  
**Cc:** Thompson, Bryan  
**Subject:** Sewer access request

**CAUTION:** This email originated from outside of the Town of Westport's email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Elizabeth Solovay  
28 Narrow Rocks Road  
Westport, CT 06880

December 16, 2020

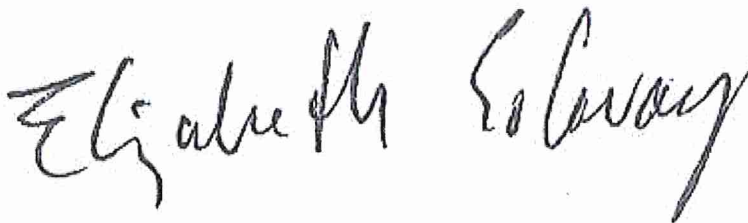
Hon. James S. Marpe,  
First Selectman  
110 Myrtle Ave, Room 310  
Westport, CT 06880

Re: Sanitary Sewer Connection Request

Dear Mr. Marpe:

As the owner of above referenced property, I am requesting approval from the Board of Selectman in their capacity as the Water Pollution Control Authority to connect my residence to the Town Sanitary Sewer.

Kind Regards,



Elizabeth Solovay

ITEM #7

7. To take such action as the meeting may determine, in accordance with Section 1-225b of the Connecticut General Statutes, to review and approve the 2021 Calendar of regularly scheduled public meetings of the Board of Selectmen, Local Traffic Authority and Water Pollution Control Authority.



To: Patricia H. Strauss, Town Clerk

The following is a List of Regular Scheduled Meetings of the undersigned body for the year beginning February 1, 2021 filed in accordance with Section 1-225b of the General Statutes of the State of Connecticut. Pursuant to the Governor's Executive Order No. 7B, meetings will be held electronically until further notice.

DATE: <u>FEBRUARY, 2021</u> 10, 24 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>	DATE: <u>MARCH</u> 10, 24 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>	DATE: <u>APRIL</u> 14, 28 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>	DATE: <u>MAY</u> 12, 26 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>
DATE: <u>JUNE</u> 9, 23 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>	DATE: <u>JULY</u> 14, 28 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>	DATE: <u>AUGUST</u> 11, 25 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>	DATE: <u>SEPTEMBER</u> 8, 22 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>
DATE: <u>OCTOBER</u> 13, 27 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>	DATE: <u>NOVEMBER</u> 10, 24 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>	DATE: <u>DECEMBER</u> 8, 22 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>	DATE: <u>JANUARY 2022</u> 12, 26 TIME: <u>9:00 AM</u> PLACE: <u>remote</u>

NAME OF BOARD OR COMMISSION

Board of Selectmen, LTA, WPCA

SIGNATURE OF  
CHAIRMAN OR SECRETARY

E-MAIL ADDRESS

Date

ITEM #8  
ADDENDUM

8. To take such action as the meeting may determine, upon the request of the Fire Chief, to review and approve the Communications System and Service Agreement between the Town of Westport and Motorola Solutions, Inc. as it relates to the Public Safety Radio System.

## Communications System and Services Agreement

Motorola Solutions, Inc. ("Motorola") and Town of Westport, Ct ("Customer") enter into this "Agreement," pursuant to which Customer will purchase and Motorola will sell the System and Services, as described below. Motorola and Customer may be referred to individually as a "Party" and collectively as the "Parties." For good and valuable consideration, the Parties agree as follows:

### Section 1 ATTACHMENTS

1.1. EXHIBITS. The Exhibits listed below are exhibits related to the System sale and implementation. These Exhibits are incorporated into and made a part of this Agreement.

Exhibit A "Motorola Software License Agreement"

Exhibit B "Payment terms"

Exhibit C Motorola Proposal dated ~~September 18~~ December 16, 2020

Exhibit D "System Acceptance Certificate"

1.2. ADDENDUM (ADDENDA). Customer may elect to purchase professional or subscription services in addition to the System and related services. Any such services will be governed by the terms in the main body of the Agreement and an applicable Addendum containing terms specific to such service. Such Addenda will be labeled with the name of the service being purchased.

1.3 ORDER OF PRECEDENCE. In interpreting this Agreement and resolving any ambiguities: 1) the main body of this Agreement takes precedence over the exhibits (unless otherwise specified in an exhibit), and any inconsistency between Exhibits A through D will be resolved in their listed order, and 2) The applicable service Addendum will take precedence over the main body of the Agreement and the Exhibits.

### Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

**"Acceptance Tests"** means those tests described in the Acceptance Test Plan.

**"Addendum (Addenda)"** is the title of the document(s) containing a specific set of terms and conditions applicable to a particular service or other offering beyond the Communication System and System implementation services. The terms in the Addendum are applicable only to the specific service or offering described therein.

**"Administrative User Credentials"** means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. Customer's personnel with access to the Administrative User Credentials may be referred to as the Administrative User.

**"Beneficial Use"** means when Customer first uses the System or a Subsystem for operational purposes (excluding training or testing).

**"Confidential Information"** means all information consistent with the fulfillment of this Agreement that is (i) disclosed under this Agreement in oral, written, graphic, machine recognizable, and/or sample form, being clearly designated, labeled or marked as confidential or its equivalent or (ii) obtained by examination, testing or analysis of any hardware, software or any component part thereof provided by discloser to recipient. The nature and existence of this Agreement are considered Confidential Information. Confidential Information that is disclosed orally must be identified as confidential at the time of disclosure and confirmed by the discloser by submitting a written document to the recipient within thirty (30) days after such disclosure. The written document must contain a summary of the Confidential Information disclosed with enough specificity for identification purpose and must be labeled or marked as confidential or its equivalent.

**"Contract Price"** means the price for the System and implementation Services, excluding applicable sales or similar taxes and freight charges. Further, unless otherwise stated in Exhibit B, "Payment" or the pricing pages of



the proposal, recurring fees for maintenance, SUA, or subscription services are not included in the Contract Price.

**“Deliverables”** means all written information (such as reports, specifications, designs, plans, drawings, analytics, Solution Data, or other technical or business information) that Motorola prepares for Customer in the performance of the Services and is obligated to provide to Customer under this Agreement. The Deliverables, if any, are more fully described in the Statement of Work.

**“Derivative Proprietary Materials”** means derivatives of the Proprietary Materials that Motorola may from time to time, including during the course of providing the Services, develop and/or use and/or to which Motorola provides Customer access.

**“Effective Date”** means that date upon which the last Party executes this Agreement.

**“Equipment”** means the hardware components of the Solution that Customer purchases from Motorola under this Agreement. Equipment that is part of the System is described in the Equipment List.

**“Feedback”** means comments or information, in oral or written form, given to Motorola by Customer in connection with or relating to Equipment or Services, during the term of this Agreement.

**“Force Majeure”** means an event, circumstance, or act that is beyond a Party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes, other labor disturbances, supplier performance, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause.

**“Motorola Software”** means software that Motorola or its affiliated companies owns.

**“Non-Motorola Software”** means software that a party other than Motorola or its affiliated companies owns.

**“Open Source Software”** (also called “freeware” or “shareware”) means software with either freely obtainable source code, license for modification, or permission for free distribution.

**“Proprietary Materials”** means certain software tools and/or other technical materials, including, but not limited to, data, modules, components, designs, utilities, subsets, objects, program listings, models, methodologies, programs, systems, analysis frameworks, leading practices and specifications which Motorola has developed prior to, or independently from, the provision of the Services and/or which Motorola licenses from third parties.

**“Proprietary Rights”** means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

**“Services”** means system implementation, maintenance, support, subscription, or other professional services provided under this Agreement, which may be further described in the applicable Addendum and/or SOW.

**“Software”** (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term “Software” does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

**“Software License Agreement”** means the Motorola Software License Agreement (Exhibit A).

**“Software Support Policy”** (“SwSP”) means the policy set forth at [https://www.motorolasolutions.com/content/dam/msi/secure/services/software\\_policy.pdf](https://www.motorolasolutions.com/content/dam/msi/secure/services/software_policy.pdf) describing the specific technical support that will be provided to Customers under the Warranty Period and during any paid maintenance

support period for Motorola Software. This policy may be modified from time to time at Motorola's discretion.

**“Solution”** means the combination of the System(s) and Services provided by Motorola under this Agreement.

**“Solution Data”** means Customer data that is transformed, altered, processed, aggregated, correlated or operated on by Motorola, its vendors or other data sources and data that has been manipulated or retrieved using Motorola know-how to produce value-added content to data consumers, including customers or citizens which is made available to Customer with the Solution and Services.

**“Specifications”** means the functionality and performance requirements that are described in the Technical and Implementation Documents.

**“SUA” or “SUA II”** means Motorola's Software Upgrade Agreement program.

**“Subsystem”** means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.

**“System”** means the Equipment, including incidental hardware and materials, Software, and design, installation and implementation services that are combined together into an integrated system; the System(s) is (are) described in the Technical and Implementation Documents.

**“System Acceptance”** means the Acceptance Tests have been successfully completed.

**“System Data”** means data created by, in connection with or in relation to Equipment or the performance of Services under this Agreement.

**“Warranty Period”** for System Hardware, Software, or services related to system implementation means one (1) year from the date of System Acceptance or Beneficial Use, whichever occurs first. Unless otherwise stated in the applicable Addendum, Warranty Period for other Services means ninety (90) days from performance of the Service.

### **Section 3 SCOPE OF AGREEMENT AND TERM**

3.1. **SCOPE OF WORK.** Motorola will provide, install and test the System(s), and perform its other contractual responsibilities to provide the Solution, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, the Parties will agree to an equitable adjustment of the Contract Price or applicable subscription fees, Performance Schedule, or both, and will reflect the adjustment in a change order or Addendum. Neither Party is obligated to perform requested changes unless both Parties execute a written change order.

3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the date of Final Project Acceptance or expiration of the Warranty Period, or completion of the Services, whichever occurs last. The term and the effective date of recurring Services will be set forth in the applicable Addendum.

3.4. **ADDITIONAL EQUIPMENT OR SOFTWARE.** For three (3) years after the expiration date of the Agreement, Customer may order additional Equipment or Software, if it is then available. Each purchase order must refer to this Agreement, the expiration date of the Agreement, and must specify the pricing and delivery terms. The Parties agree that, notwithstanding expiration of the Agreement, the applicable provisions of this Agreement (except for pricing, delivery, passage of title and risk of loss to Equipment, warranty commencement, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Additional or contrary terms in the purchase order will be inapplicable, unless signed by both parties. Title and risk of loss to additional Equipment will pass at shipment, warranty will commence upon delivery, and payment is due within



thirty (30) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed. Alternatively, Customer may register with and place orders through Motorola Online ("MOL"), and this Agreement will be the "Underlying Agreement" for those MOL transactions rather than the MOL On-Line Terms and Conditions of Sale. MOL registration and other information may be found at <https://businessonline.motorolasolutions.com> and the MOL telephone number is (800) 814-0601.

3.5. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.6. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor's rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software.

3.7. **SUBSTITUTIONS.** At no additional cost to Customer, Motorola may substitute any Equipment, Software, or services to be provided by Motorola, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the Customer. Any substitution will be reflected in a change order.

3.8. **OPTIONAL EQUIPMENT OR SOFTWARE.** This paragraph applies only if a "Priced Options" exhibit is shown in Section 1, or if the parties amend this Agreement to add a Priced Options exhibit. During the term of the option as stated in the Priced Options exhibit (or if no term is stated, then for one (1) year after the Effective Date), Customer has the right and option to purchase the equipment, software, and related services that are described in the Priced Options exhibit. Customer may exercise this option by giving written notice to Seller which must designate what equipment, software, and related services Customer is selecting (including quantities, if applicable). To the extent they apply, the terms and conditions of this Agreement will govern the transaction; however, the parties acknowledge that certain provisions must be agreed upon, and they agree to negotiate those in good faith promptly after Customer delivers the option exercise notice. Examples of provisions that may need to be negotiated are: specific lists of deliverables, statements of work, acceptance test plans, delivery and implementation schedules, payment terms, maintenance and support provisions, additions to or modifications of the Software License Agreement, hosting terms, and modifications to the acceptance and warranty provisions.

#### **Section 4 SERVICES**

4.1. If Customer desires and Motorola agrees to continue Services beyond the Term, Customer's issuance and Motorola's acceptance of a purchase order for Services will serve as an automatic extension of the Agreement for purposes of the continuing Services. Only the terms and conditions applicable to the performance of Services will apply to the extended Agreement.

4.2. During the Warranty Period, in addition to warranty services, Motorola will provide maintenance Services for the Equipment and support for the Motorola Software pursuant to the applicable maintenance and support Statements of Work. Support for the Motorola Software will be in accordance with Motorola's established Software Support Policy. Copies of the SwSP can be found at [https://www.motorolasolutions.com/content/dam/msi/secure/services/software\\_policy.pdf](https://www.motorolasolutions.com/content/dam/msi/secure/services/software_policy.pdf) and will be sent by mail, email or fax to Customer upon written request. Maintenance Services and support during the Warranty Period are included in the Contract Price. Unless already included in the Contract Price, if Customer wishes to purchase 1) additional maintenance or software support services during the Warranty Period; or 2) continue or expand maintenance, software support, installation, and/or SUA services after the Warranty Period, Motorola will provide the description of and pricing for such services in a separate proposal document. Unless otherwise agreed by the parties in writing, the terms and conditions in this Agreement applicable to maintenance, support, installation, and/or SUA Services, will be included in the Maintenance and Support Addendum, SUA Addendum, the applicable Statements of Work, and the proposal, (if applicable). These collective terms will govern the provision of such Services.



To obtain any such additional Services, Customer will issue a purchase order referring to this Agreement and the separate proposal document. Omission of reference to this Agreement in Customer's purchase order will not affect the applicability of this Agreement. Motorola's proposal may include a cover page entitled "Service Agreement" or "Installation Agreement", as applicable, and other attachments. These cover pages and other attachments are incorporated into this Agreement by this reference

4.3. **PROFESSIONAL AND SUBSCRIPTION SERVICES.** If Customer purchases professional or subscription Services as part of the Solution, additional or different terms specific to such Service will be included in the applicable Addendum and will apply to those Services. Customer may purchase additional professional or subscription services by issuing a purchase order referencing this Agreement and Motorola's proposal for such additional services.

4.4. Any information in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer in providing Services under this Agreement or Motorola data viewed, accessed, will remain Motorola's property, will be deemed proprietary, Confidential Information. This Confidential Information will be promptly returned at Motorola's request.

4.5. **TOOLS.** All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of providing Services under this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction. Upon termination of the contract for any reason, Customer shall return to Motorola all equipment delivered to Customer.

4.6. **COVENANT NOT TO EMPLOY.** During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering Services under this Agreement and have been identified by Motorola as covered employees. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

4.7. **CUSTOMER OBLIGATIONS.** If the applicable Statement of Work or Addendum contains assumptions that affect the Services or Deliverables, Customer will verify that they are accurate and complete. Any information that Customer provides to Motorola concerning the Services or Deliverables will be accurate and complete in all material respects. Customer will make timely decisions and obtain any required management approvals that are reasonably necessary for Motorola to perform the Services and its other duties under this Agreement. Unless the Statement of Work states the contrary, Motorola may rely upon and is not required to evaluate, confirm, reject, modify, or provide advice concerning any assumptions and Customer-provided information, decisions and approvals described in this paragraph.

4.8. **ASSUMPTIONS.** If any assumptions or conditions contained in this Agreement, applicable Addenda or Statements of Work prove to be incorrect or if Customer's obligations are not performed, Motorola's ability to perform under this Agreement may be impacted and changes to the Contract Price, subscription fees, project schedule, Deliverables, or other changes may be necessary.

4.9. **NON-PRECLUSION.** If, as a result of the Services performed under this Agreement, Motorola recommends that Customer purchase products or other services, nothing in this Agreement precludes Motorola from participating in a future competitive bidding process or otherwise offering or selling the recommended products or other services to Customer. Customer represents that this paragraph does not violate its procurement or other laws, regulations, or policies.

4.10. **PROPRIETARY MATERIALS.** Customer acknowledges that Motorola may use and/or provide Customer

with access to Proprietary Materials and Derivative Proprietary Materials. The Proprietary Materials and the Derivative Proprietary Materials are the sole and exclusive property of Motorola and Motorola retains all right, title and interest in and to the Proprietary Materials and Derivative Proprietary Materials.

4.11. ADDITIONAL SERVICES. Any services performed by Motorola outside the scope of this Agreement at the direction of Customer will be considered to be additional Services which are subject to additional charges. Any agreement to perform additional Services will be reflected in a written and executed change order, Addendum or amendment to this Agreement.

## **Section 5 PERFORMANCE SCHEDULE**

The Parties will perform their respective responsibilities in accordance with the Performance Schedule. By executing this Agreement, Customer authorizes Motorola to proceed with contract performance.

## **Section 6 CONTRACT PRICE, PAYMENT AND INVOICING**

6.1. Customer affirms that a purchase order or notice to proceed is not required for contract performance or for subsequent years of service, if any, and that sufficient funds have been appropriated in accordance with applicable law. The Customer will pay all invoices as received from Motorola and any changes in scope will be subject to the change order process as described in this Agreement. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

6.2. CONTRACT PRICE. The Contract Price in U.S. dollars is \$3,736,008. If applicable, a pricing summary is included with the Payment schedule in Exhibit B. Motorola has priced the Services, Software, and Equipment as an integrated System. A change in Software or Equipment quantities, or Services, may affect the overall Contract Price, including discounts if applicable. Fees for professional, SUA, and/or subscription services which are not included in the Contract Price may be listed in Exhibit B, the pricing pages of the proposal, or the applicable Addendum.

6.3. INVOICING AND PAYMENT. Motorola will submit invoices to Customer according to the Payment schedule in Exhibit B. Invoices will be mailed or emailed to Customer pursuant to Section 6.5, Invoicing and Shipping Addresses. Except for a payment that is due on the Effective Date, Customer will make payments to Motorola within thirty (30) days after the [presentation date](#) of each invoice [to the Customer's Finance Department with all required approvals](#). Customer will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution. Overdue invoices will bear simple interest at the maximum allowable rate. For reference, the Federal Tax Identification Number for Motorola is 36-1115800.

6.4. FREIGHT, TITLE, AND RISK OF LOSS. Motorola will pre-pay and add all freight charges to the invoices. Title and risk of loss to the Equipment will pass to Customer upon shipment. Title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

6.5. INVOICING AND SHIPPING ADDRESSES. Invoices will be sent to the Customer at the following address:

Name: Town of Westport – Deputy Chief Matt Cohen\_  
Address: 515 Post Rd E, Westport, CT 06880  
Phone: 203-509-4830\_

E-INVOICE. To receive invoices via email:  
Customer Account Number: 1011846584  
Customer Accounts Payable Email: [mcohen@westportct.gov](mailto:mcohen@westportct.gov)  
Customer CC(optional) Email: \_\_\_\_\_

The address which is the ultimate destination where the Equipment will be delivered to Customer is: Town of Westport – Deputy Fire Chief Matt Cohen\_  
Address: 515 Post Rd E, Westport, CT 06880



The Equipment will be shipped to the Customer at the following address (insert if this information is known):

Name: Norcom CT  
7 Great Hill Rd  
Naugatuck, CT 06770  
800-223-9008  
Attn: Westport Ct System

Customer may change this information by giving written notice to Motorola.

## **Section 7 SITES AND SITE CONDITIONS**

7.1. ACCESS TO SITES. In addition to its responsibilities described elsewhere in this Agreement, Customer will provide a designated project manager; all necessary construction and building permits, zoning variances, licenses, and any other approvals that are necessary to develop or use the sites and mounting locations; and access to the worksites or vehicles identified in the Technical and Implementation Documents as reasonably requested by Motorola so that it may perform its duties in accordance with the Performance Schedule and Statement of Work. If the Statement of Work so indicates, Motorola may assist Customer in the local building permit or license application process. Although Motorola might assist Customer in the preparation of its license or permit applications, neither Motorola nor any of its employees are agents or representatives of Customer in any way. [NF1]

7.2. SITE CONDITIONS. Customer will ensure that all work sites it provides will be safe, secure, and in compliance with all applicable industry and OSHA standards. To the extent applicable and unless the Statement of Work states to the contrary, Customer will ensure that these work sites have adequate: physical space; air conditioning and other environmental conditions; adequate and appropriate electrical power outlets, distribution, equipment and connections; and adequate telephone or other communication lines (including modem access and adequate interfacing networking capabilities), all for the installation, use and maintenance of the System. Before installing the Equipment or Software at a work site, Motorola may inspect the work site and advise Customer of any apparent deficiencies or non-conformities with the requirements of this Section. This Agreement is predicated upon normal soil conditions as defined by the version of E.I.A. standard RS-222 in effect on the Effective Date.

7.3. SITE ISSUES. If a Party determines that the sites identified in the Technical and Implementation Documents are no longer available or desired, or if subsurface, structural, adverse environmental or latent conditions at any site differ from those indicated in the Technical and Implementation Documents, the Parties will promptly investigate the conditions and will select replacement sites or adjust the installation plans and specifications as necessary. If change in sites or adjustment to the installation plans and specifications causes a change in the cost or time to perform, the Parties will equitably amend the Contract Price, Performance Schedule, or both, by a change order.

## **Section 8 TRAINING**

Any training to be provided by Motorola to Customer will be described in the applicable Statement of Work. Customer will notify Motorola immediately if a date change for a scheduled training program is required. If Motorola incurs additional costs because Customer reschedules a training program less than thirty (30) days before its scheduled start date, Motorola may recover these additional costs.

## **Section 9 SYSTEM ACCEPTANCE**

9.1. COMMENCEMENT OF ACCEPTANCE TESTING. Motorola will provide to Customer at least ten (10) days notice before the Acceptance Tests commence. System testing will occur only in accordance with the Acceptance Test Plan.



9.2. SYSTEM ACCEPTANCE. System Acceptance will occur upon successful completion of the Acceptance Tests. Upon System Acceptance, the Parties will memorialize this event by promptly executing a System Acceptance Certificate. If the Acceptance Test Plan includes separate tests for individual Subsystems or phases of the System, acceptance of the individual Subsystem or phase will occur upon the successful completion of the Acceptance Tests for the Subsystem or phase, and the Parties will promptly execute an acceptance certificate for the Subsystem or phase. If Customer believes the System has failed the completed Acceptance Tests, Customer will provide to Motorola a written notice that includes the specific details of the failure. If Customer does not provide to Motorola a failure notice within thirty (30) days after completion of the Acceptance Tests, System Acceptance will be deemed to have occurred as of the completion of the Acceptance Tests. Minor omissions or variances in the System that do not materially impair the operation of the System as a whole will not postpone System Acceptance or Subsystem acceptance, but will be corrected according to a mutually agreed schedule.

9.3. BENEFICIAL USE. Customer acknowledges that Motorola's ability to perform its implementation and testing responsibilities may be impeded if Customer begins using the System before System Acceptance. Therefore, Customer will not commence Beneficial Use before System Acceptance without Motorola's prior written authorization, which will not be unreasonably withheld. Motorola is not responsible for System performance deficiencies that occur during unauthorized Beneficial Use. Upon commencement of Beneficial Use, Customer assumes responsibility for the use and operation of the System.

9.4. FINAL PROJECT ACCEPTANCE. Final Project Acceptance will occur after System Acceptance when all deliverables and other work have been completed. When Final Project Acceptance occurs, the parties will promptly memorialize this final event by so indicating on the System Acceptance Certificate.

## Section 10 REPRESENTATIONS AND WARRANTIES

10.1. SYSTEM FUNCTIONALITY. Motorola represents that the System will perform in accordance with the Specifications in all material respects. Upon System Acceptance or Beneficial Use, whichever occurs first, this System functionality representation is fulfilled. Motorola is not responsible for System performance deficiencies that are caused by ancillary equipment not furnished by Motorola which is attached to or used in connection with the System or for reasons or parties beyond Motorola's control, such as natural causes; the construction of a building that adversely affects the microwave path reliability or radio frequency (RF) coverage; the addition of frequencies at System sites that cause RF interference or intermodulation; or Customer changes to load usage or configuration outside the Specifications.

10.2. EQUIPMENT WARRANTY. During the Warranty Period, Motorola warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship. If System Acceptance is delayed beyond six (6) months after shipment of the Equipment by events or causes beyond Motorola's control, this warranty expires eighteen (18) months after the shipment of the Equipment.

10.3. SOFTWARE WARRANTY. Except as described in the SwSP and unless otherwise stated in the Software License Agreement, during the Warranty Period, Motorola warrants the Software in accordance with the warranty terms set forth in the Software License Agreement and the provisions of this Section that are applicable to the Software. If System Acceptance is delayed beyond six (6) months after shipment of the Motorola Software by events or causes beyond Motorola's control, this warranty expires eighteen (18) months after the shipment of the Motorola Software. **Nothing in this Warranty provision is intended to conflict or modify the Software Support Policy. In the event of an ambiguity or conflict between the Software Warranty and Software Support Policy, the Software Support Policy governs.**

10.4. EXCLUSIONS TO EQUIPMENT AND SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; Customer's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that



does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

10.5. **SERVICE WARRANTY.** During the Warranty Period, Motorola warrants that the Services will be provided in a good and workmanlike manner and will conform in all material respects to the applicable Statement of Work. Services will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. Customer acknowledges that the Deliverables may contain recommendations, suggestions or advice from Motorola to Customer (collectively, "recommendations"). Motorola makes no warranties concerning those recommendations, and Customer alone accepts responsibility for choosing whether and how to implement the recommendations and the results to be realized from implementing them.

10.6. **WARRANTY CLAIMS.** To assert a warranty claim, Customer must notify Motorola in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Motorola will investigate the warranty claim. If this investigation confirms a valid Equipment or Software warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. These actions will be the full extent of Motorola's liability for the warranty claim. In the event of a valid Services warranty claim, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's then current labor rates. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Motorola.

10.7. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Motorola to the original user purchasing the System or Services for commercial, industrial, or governmental use only, and are not assignable or transferable.

10.8. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

## **Section 11 DELAYS**

11.1. **FORCE MAJEURE.** Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule or applicable Addenda for a time period that is reasonable under the circumstances.

11.2. **PERFORMANCE SCHEDULE DELAYS CAUSED BY CUSTOMER.** If Customer (including its other contractors) delays the Performance Schedule, it will make the promised payments according to the Payment schedule as if no delay occurred; and the Parties will execute a change order to extend the Performance Schedule and, if requested, compensate Motorola for all reasonable charges incurred because of the delay. Delay charges may include costs incurred by Motorola or its subcontractors for additional freight, warehousing and handling of Equipment; extension of the warranties; travel; suspending and re-mobilizing the work; additional engineering, project management, and standby time calculated at then current rates; and preparing and implementing an alternative implementation plan.

## **Section 12 DISPUTES**

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

12.1. **GOVERNING LAW.** This Agreement will be governed by and construed in accordance with the laws of the State in which the System is installed.



12.2. NEGOTIATION. Either Party may initiate the Dispute resolution procedures by sending a notice of Dispute ("Notice of Dispute"). The Parties will attempt to resolve the Dispute promptly through good faith negotiations including 1) timely escalation of the Dispute to executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the Dispute has not been resolved within ten (10) days from the Notice of Dispute, the Parties will proceed to mediation.

12.3. MEDIATION. The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will be represented at the mediation by a business executive with authority to settle the Dispute.

12.4. LITIGATION, VENUE and JURISDICTION. If a Dispute remains unresolved for sixty (60) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the state in which the System is installed. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

12.5. CONFIDENTIALITY. All communications pursuant to subsections 12.2 and 12.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

### **Section 13      DEFAULT AND TERMINATION**

13.1. DEFAULT BY A PARTY. If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Customer for failing to pay any amount when due under this Agreement which must be cured immediately, the defaulting Party will have thirty (30) days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan. If Customer is the defaulting Party, Motorola may stop work on the project until it approves the Customer's cure plan.

13.2. FAILURE TO CURE. If a defaulting Party fails to cure the default as provided above in Section 13.1, unless otherwise agreed in writing, the non-defaulting Party may terminate any unfulfilled portion of this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Customer is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Customer may as its exclusive remedy recover from Motorola reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Contract Price. Customer will mitigate damages and provide Motorola with detailed invoices substantiating the charges. In the event Customer elects to terminate this Agreement for any reason other than default, Customer shall pay Motorola for the conforming Equipment and/or Software delivered and all services performed.

13.3. TERMINATION FOR CONVENIENCE. Customer may terminate this Agreement (in whole or part) at any time. To exercise this right, Customer must provide to Motorola formal written notice at least thirty (30) days in advance of the effective date of the termination. The notice must explicitly state the effective date of the termination and whether the contract termination is in whole or in part, and if in part, which part is being terminated. If Customer exercises this right to terminate for convenience, it will be liable to pay Motorola for (1) the portion of the Contract Price attributable to the Products provided and Services performed, on or before the effective date of the termination; and (2) costs and expenses that Motorola incurs as a result of the termination of the Agreement, including but not limited to costs and expenses associated with cancellation of subcontracts.



restocking fees, removal of installation or test equipment, etc. If the portion of the Contract Price and/or the recoverable costs and expenses attributable to the termination of the Agreement are not readily ascertainable, Customer will be liable to pay Motorola for the reasonable value of such Products, Services, costs and expenses. The SUAll annualized price is based on the fulfillment of the two year cycle. If Customer terminates this service during a two year cycle, except for Motorola's default, then Customer will be required to pay, at the time of termination, [NF2] for the balance of payments owed for the two year cycle if a major system release has been implemented before the point of termination. Notwithstanding the above, Customer shall have no right to terminate this Agreement if Motorola has given Customer a notice of default and such default has not been cured.

## **Section 14 INDEMNIFICATION**

14.1. GENERAL INDEMNITY BY Motorola. Motorola will indemnify and hold Customer harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Customer to the extent it is caused by the negligence of Motorola, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Customer gives Motorola prompt, written notice of any claim or suit. Customer will cooperate with Motorola in its defense or settlement of the claim or suit. This Section sets forth the full extent of Motorola's general indemnification of Customer from liabilities that are in any way related to Motorola's performance under this Agreement.

14.2. GENERAL INDEMNITY BY CUSTOMER. Customer will indemnify and hold Motorola harmless from any and all liability, expense, judgment, suit, cause of action, or demand for personal injury, death, or direct damage to tangible property which may accrue against Motorola to the extent it is caused by the negligence of Customer, its other contractors, or their employees or agents, while performing their duties under this Agreement, if Motorola gives Customer prompt, written notice of any the claim or suit. Motorola will cooperate with Customer in its defense or settlement of the claim or suit. This Section sets forth the full extent of Customer's general indemnification of Motorola from liabilities that are in any way related to Customer's performance under this Agreement.

### **14.3. PATENT AND COPYRIGHT INFRINGEMENT.**

14.3.1. Motorola will defend at its expense any suit brought against Customer to the extent it is based on a third-party claim alleging that the Equipment manufactured by Motorola or the Motorola Software ("Motorola Product") directly infringes a United States patent or copyright ("Infringement Claim"). Motorola's duties to defend and indemnify are conditioned upon: Customer promptly notifying Motorola in writing of the Infringement Claim; Motorola having sole control of the defense of the suit and all negotiations for its settlement or compromise; and Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim. In addition to Motorola's obligation to defend, and subject to the same conditions, Motorola will pay all damages finally awarded against Customer by a court of competent jurisdiction for an Infringement Claim or agreed to, in writing, by Motorola in settlement of an Infringement Claim.

14.3.2 If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense: (a) procure for Customer the right to continue using the Motorola Product; (b) replace or modify the Motorola Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the Motorola Product and grant Customer a credit for the Motorola Product, less a reasonable charge for depreciation. The depreciation amount will be calculated based upon generally accepted accounting standards.

14.3.3 Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Motorola Product with any software, apparatus or device not furnished by Motorola; (b) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Motorola Product; (c) Motorola Product designed or manufactured in accordance with Customer's designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Motorola Product by a party other than Motorola; (e) use of the Motorola Product in a manner for which the Motorola Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. In no event will Motorola's liability



resulting from its indemnity obligation to Customer extend in any way to royalties payable on a per use basis or the Customer's revenues, or any royalty basis other than a reasonable royalty based upon revenue derived by Motorola from Customer from sales or license of the infringing Motorola Product.

14.3.4. This Section 14 provides Customer's sole and exclusive remedies and Motorola's entire liability in the event of an Infringement Claim. Customer has no right to recover and Motorola has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim. In addition, the rights and remedies provided in this Section 14 are subject to and limited by the restrictions set forth in Section 15.

## **Section 15      LIMITATION OF LIABILITY**

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or implementation and other one-time Services with respect to which losses or damages are claimed. With respect to all subscription or other ongoing Services and unless as otherwise provided under the applicable Addenda, Motorola's total liability will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Services preceding the incident giving rise to the claim. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, LOSS TIME, DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT.** This limitation of liability provision survives the expiration or termination of the Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of the cause of action, except for money due upon an open account.

## **Section 16      CONFIDENTIALITY AND PROPRIETARY RIGHTS**

16.1. CONFIDENTIAL INFORMATION. [This Section is subject to the Connecticut Freedom of Information Act.](#)

16.1.1. Each party is a disclosing party ("Discloser") and a receiving party ("Recipient") under this Agreement. All Deliverables will be deemed to be Motorola's Confidential Information. During the term of this Agreement and for a period of three (3) years from the expiration or termination of this Agreement, Recipient will (i) not disclose Confidential Information to any third party; (ii) restrict disclosure of Confidential Information to only those employees (including, but not limited to, employees of any wholly owned subsidiary, a parent company, any other wholly owned subsidiaries of the same parent company), agents or consultants who must be directly involved with the Confidential Information for the purpose and who are bound by confidentiality terms substantially similar to those in this Agreement; (iii) not copy, reproduce, reverse engineer, decompile, or disassemble any Confidential Information; (iv) use the same degree of care as for its own information of like importance, but at least use reasonable care, in safeguarding against disclosure of Confidential Information; (v) promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and take reasonable steps to regain possession of the Confidential Information and prevent further unauthorized actions or other breach of this Agreement; and (vi) only use the Confidential Information as needed to fulfill this Agreement.

16.1.2. Recipient is not obligated to maintain as confidential, Confidential Information that Recipient can demonstrate by documentation (i) is now available or becomes available to the public without breach of this agreement; (ii) is explicitly approved for release by written authorization of Discloser; (iii) is lawfully obtained from a third party or parties without a duty of confidentiality; (iv) is known to the Recipient prior to such disclosure; or (v) is independently developed by Recipient without the use of any of Discloser's Confidential Information or any breach of this Agreement.

16.1.3. All Confidential Information remains the property of the Discloser and will not be copied or reproduced



without the express written permission of the Discloser, except for copies that are absolutely necessary in order to fulfill this Agreement. Within ten (10) days of receipt of Discloser's written request, Recipient will return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed. However, Recipient may retain one (1) archival copy of the Confidential Information that it may use only in case of a dispute concerning this Agreement. No license, express or implied, in the Confidential Information is granted other than to use the Confidential Information in the manner and to the extent authorized by this Agreement. The Discloser warrants that it is authorized to disclose any Confidential Information it discloses pursuant to this Agreement.

16.2. **PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.** Motorola, the third party manufacturer of any Equipment, and the copyright owner of any Non-Motorola Software own and retain all of their respective Proprietary Rights in the Equipment and Software, and nothing in this Agreement is intended to restrict their Proprietary Rights. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. Except as explicitly provided in the Software License Agreement, Motorola does not grant to Customer, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Customer will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export the Software, or permit or encourage any third party to do so. The preceding sentence does not apply to Open Source Software which is governed by the standard license of the copyright owner.

16.3 **VOLUNTARY DISCLOSURE.** Except as required to fulfill its obligations under this Agreement, Motorola will have no obligation to provide Customer with access to its Confidential Information and/or proprietary information. Under no circumstances will Motorola be required to provide any data related to cost and pricing.

#### 16.4 DATA AND FEEDBACK.

16.4.1 To the extent permitted by law, Customer owns all right, title and interest in System Data created solely by it or its agents (hereafter, "Customer Data"), and grants to Motorola the right to use, host, cache, store, reproduce, copy, modify, combine, analyze, create derivatives from, communicate, transmit, publish, display, and distribute such Customer Data.

16.4.2 Motorola owns all right, title and interest in data resulting from System Data that is or has been transformed, altered, processed, aggregated, correlated or operated on (hereafter, "Derivative Data").

16.4.3 Any Feedback given by Customer is and will be entirely voluntary and, even if designated as confidential, will not create any confidentiality obligation for Motorola. Motorola will be free to use, reproduce, license or otherwise distribute and exploit the Feedback without any obligation to Customer. Customer acknowledges that Motorola's receipt of the Feedback does not imply or create recognition by Motorola of either the novelty or originality of any idea. The parties further agree that all fixes, modifications and improvements made to Motorola products or services conceived of or made by Motorola that are based, either in whole or in part, on the Feedback are the exclusive property of Motorola and all right, title and interest in and to such fixes, modifications or improvements to the Motorola product or service will vest solely in Motorola.

### **Section 17 GENERAL**

17.1. **TAXES.** The Contract Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Customer except as exempt by law. If Motorola is required to pay any of these taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of the taxes (including any interest and penalties) within thirty (30) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes, and Motorola will be solely responsible for reporting taxes on its income or net worth.



17.2. **ASSIGNABILITY AND SUBCONTRACTING.** Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.3. **WAIVER.** Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

17.4. **SEVERABILITY.** If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

17.5. **INDEPENDENT CONTRACTORS.** Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

17.6. **HEADINGS AND SECTION REFERENCES.** The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

17.7. **NOTICES.** Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address provided by the other Party by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt.

17.8. **COMPLIANCE WITH APPLICABLE LAWS.** Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all Federal Communications Commission ("FCC") licenses and authorizations required for the installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

17.9 **FUTURE REGULATORY REQUIREMENTS.** The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Services and use of Solution may change. Changes to existing Services or the Solution required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

17.10. **AUTHORITY TO EXECUTE AGREEMENT.** Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

17.11. **ADMINISTRATOR LEVEL ACCOUNT ACCESS.** If applicable to the type of System purchased by Customer, Motorola will provide Customer with Administrative User Credentials. Customer agrees to only grant access to the Administrative User Credentials to those personnel with the training and experience to correctly use them. Customer is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. Customer may be asked to provide valid Administrative User Credentials when in contact with Motorola System support personnel. Customer understands that changes made as the Administrative User can significantly impact the performance of the System. Customer agrees that it will be solely responsible for any negative impact on the System or its users by any such changes. System issues occurring as a result of changes made using the Administrative User Credentials may impact Motorola's ability to perform Services or other obligations under the Agreement. In such cases, a revision to the appropriate provisions of the Agreement, including the Statement of Work, may be necessary. To the extent Motorola provides assistance to correct any issues caused by or arising out of the use of or failure to maintain Administrative User Credentials, Motorola will be entitled to bill Customer and Customer will pay Motorola on a time and materials basis for resolving the issue.

17.12. **SURVIVAL OF TERMS.** The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.5 (Motorola Software); Section 3.6 (Non-Motorola Software); if any payment obligations exist, Sections 6.2 and 6.3 (Contract Price and Invoicing and Payment); Subsection 10.8 (Disclaimer of Implied Warranties); Section 12 (Disputes); Section 15 (Limitation of Liability); and Section 16 (Confidentiality and Proprietary Rights); and all of the General provisions in Section 17.

17.13. **ENTIRE AGREEMENT.** This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be executed in multiple counterparts, and shall have the same legal force and effect as if the Parties had executed it as a single document. The Parties may sign in writing, or by electronic signature, including by email. An electronic signature, or a facsimile copy or computer image, such as a PDF or tiff image, of a signature, shall be treated as and shall have the same effect as an original signature. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

[17.14. INCORPORATION OF STATE AGREEMENT CERTIFICATIONS; PERFORMANCE BOND; INSURANCE.](#) The Parties agree that Motorola's obligations under Sections 32; 33; 47; 48; 49; 50; 51; and 52 of the State of Connecticut's Master Contract #A-99-001 for Two-Way Radio Equipment are incorporated herein by this reference.

The Parties hereby enter into this Agreement as of the Effective Date.

**Motorola Solutions, Inc.**

**Customer**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



## Exhibit A

### MOTOROLA SOFTWARE LICENSE AGREEMENT

This Exhibit A Motorola Software License Agreement ("Agreement") is between Motorola Solutions, Inc., ("Motorola"), and Town of Westport ("Licensee").

For good and valuable consideration, the parties agree as follows:

#### Section 1 DEFINITIONS

1.1 "Designated Products" means products provided by Motorola to Licensee with which or for which the Software and Documentation is licensed for use.

1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

1.3 "Open Source Software" means software with either freely obtainable source code, license for modification, or permission for free distribution.

1.4 "Open Source Software License" means the terms or conditions under which the Open Source Software is licensed.

1.5 "Primary Agreement" means the agreement to which this exhibit is attached.

1.6 "Security Vulnerability" means a flaw or weakness in system security procedures, design, implementation, or internal controls that could be exercised (accidentally triggered or intentionally exploited) and result in a security breach such that data is compromised, manipulated or stolen or the system damaged.

1.7 "Software" (i) means proprietary software in object code format, and adaptations, translations, de-compilations, disassemblies, emulations, or derivative works of such software; (ii) means any modifications, enhancements, new versions and new releases of the software provided by Motorola; and (iii) may contain one or more items of software owned by a third party supplier. The term "Software" does not include any third party software provided under separate license or third party software not licensable under the terms of this Agreement.

#### Section 2 SCOPE

Motorola and Licensee enter into this Agreement in connection with Motorola's delivery of certain proprietary software or products containing embedded or pre-loaded proprietary software, or both. This Agreement contains the terms and conditions of the license Motorola is providing to Licensee, and Licensee's use of the proprietary software and affiliated documentation.

#### Section 3 GRANT OF LICENSE

3.1. Subject to the provisions of this Agreement and the payment of applicable license fees, Motorola grants to Licensee a personal, limited, non-transferable (except as permitted in Section 7) and non-exclusive license under Motorola's copyrights and Confidential Information (as defined in the Primary Agreement) embodied in the Software to use the Software, in object code form, and the Documentation solely in connection with Licensee's use of the Designated Products. This Agreement does not grant any rights to source code.

3.2. If the Software licensed under this Agreement contains or is derived from Open Source Software, the terms and conditions governing the use of such Open Source Software are in the Open Source Software Licenses of the copyright owner and not this Agreement. If there is a conflict between the terms and conditions of this Agreement and the terms and conditions of the Open Source Software Licenses governing Licensee's use of

the Open Source Software, the terms and conditions of the license grant of the applicable Open Source Software Licenses will take precedence over the license grants in this Agreement. If requested by Licensee, Motorola will use commercially reasonable efforts to: (i) determine whether any Open Source Software is provided under this Agreement; and (ii) identify the Open Source Software (or specify where that license may be found).

3.3 TO THE EXTENT, IF ANY, THAT THERE IS A SEPARATE LICENSE AGREEMENT PACKAGED WITH, OR PROVIDED ELECTRONICALLY WITH, A PARTICULAR PRODUCT THAT BECOMES EFFECTIVE ON AN ACT OF ACCEPTANCE BY THE END USER, THEN THAT AGREEMENT SUPERSEDES THE SOFTWARE LICENSE AGREEMENT AS TO THE END USER OF EACH SUCH PRODUCT.

#### **Section 4 LIMITATIONS ON USE**

4.1. Licensee may use the Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Without limiting the general nature of these restrictions, Licensee will not make the Software available for use by third parties on a "time sharing," "application service provider," or "service bureau" basis or for any other similar commercial rental or sharing arrangement.

4.2. Licensee will not, and will not allow or enable any third party to: (i) reverse engineer, disassemble, peel components, decompile, reprogram or otherwise reduce the Software or any portion to a human perceptible form or otherwise attempt to recreate the source code; (ii) modify, adapt, create derivative works of, or merge the Software; (iii) copy, reproduce, distribute, lend, or lease the Software or Documentation to any third party, grant any sublicense or other rights in the Software or Documentation to any third party, or take any action that would cause the Software or Documentation to be placed in the public domain; (iv) remove, or in any way alter or obscure, any copyright notice or other notice of Motorola's proprietary rights; (v) provide, copy, transmit, disclose, divulge or make the Software or Documentation available to, or permit the use of the Software by any third party or on any machine except as expressly authorized by this Agreement; or (vi) use, or permit the use of, the Software in a manner that would result in the production of a copy of the Software solely by activating a machine containing the Software. Licensee may make one copy of Software to be used solely for archival, back-up, or disaster recovery purposes; *provided* that Licensee may not operate that copy of the Software at the same time as the original Software is being operated. Licensee may make as many copies of the Documentation as it may reasonably require for the internal use of the Software.

4.3. Unless otherwise authorized by Motorola in writing, Licensee will not, and will not enable or allow any third party to: (i) install a licensed copy of the Software on more than one unit of a Designated Product; or (ii) copy onto or transfer Software installed in one unit of a Designated Product onto one other device. Licensee may temporarily transfer Software installed on a Designated Product to another device if the Designated Product is inoperable or malfunctioning, if Licensee provides written notice to Motorola of the temporary transfer and identifies the device on which the Software is transferred. Temporary transfer of the Software to another device must be discontinued when the original Designated Product is returned to operation and the Software must be removed from the other device. Licensee must provide prompt written notice to Motorola at the time temporary transfer is discontinued.

4.4 Licensee will maintain, during the term of this Agreement and for a period of two years thereafter, accurate records relating to this license grant to verify compliance with this Agreement. Motorola or an independent third party ("Auditor") may inspect Licensee's premises, books and records, upon reasonable prior notice to Licensee, during Licensee's normal business hours and subject to Licensee's facility and security regulations. Motorola is responsible for the payment of all expenses and costs of the Auditor. Any information obtained by Motorola and the Auditor will be kept in strict confidence by Motorola and the Auditor and used solely for the purpose of verifying Licensee's compliance with the terms of this Agreement.

#### **Section 5 OWNERSHIP AND TITLE**

Motorola, its licensors, and its suppliers retain all of their proprietary rights in any form in and to the Software and Documentation, including, but not limited to, all rights in patents, patent applications, inventions, copyrights, trademarks, trade secrets, trade names, and other proprietary rights in or relating to the Software and



Documentation (including any corrections, bug fixes, enhancements, updates, modifications, adaptations, translations, de-compilations, disassemblies, emulations to or derivative works from the Software or Documentation, whether made by Motorola or another party, or any improvements that result from Motorola's processes or, provision of information services). No rights are granted to Licensee under this Agreement by implication, estoppel or otherwise, except for those rights which are expressly granted to Licensee in this Agreement. All intellectual property developed, originated, or prepared by Motorola in connection with providing the Software, Designated Products, Documentation or related services, remains vested exclusively in Motorola, and Licensee will not have any shared development or other intellectual property rights.

## **Section 6 LIMITED WARRANTY; DISCLAIMER OF WARRANTY**

6.1. Unless otherwise stated in the Primary Agreement, the commencement date and the term of the Software warranty will be a period of ninety (90) days from Motorola's shipment of the Software (the "Warranty Period"). If Licensee is not in breach of any of its obligations under this Agreement, Motorola warrants that the unmodified Software, when used properly and in accordance with the Documentation and this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the Software. Whether a defect occurs will be determined by Motorola solely with reference to the Documentation. Motorola does not warrant that Licensee's use of the Software or the Designated Products will be uninterrupted, error-free, completely free of Security Vulnerabilities, or that the Software or the Designated Products will meet Licensee's particular requirements. Motorola makes no representations or warranties with respect to any third party software included in the Software. Notwithstanding, any warranty provided by a copyright owner in its standard license terms will flow through to Licensee for third party software provided by Motorola.

6.2 Motorola's sole obligation to Licensee and Licensee's exclusive remedy under this warranty is to use reasonable efforts to remedy any material Software defect covered by this warranty. These efforts will involve either replacing the media or attempting to correct significant, demonstrable program or documentation errors or Security Vulnerabilities. If Motorola cannot correct the defect within a reasonable time, then at Motorola's option, Motorola will replace the defective Software with functionally-equivalent Software, license to Licensee substitute Software which will accomplish the same objective, or terminate the license and refund the Licensee's paid license fee.

6.3. Warranty claims are described in the Primary Agreement.

6.4. The express warranties set forth in this Section 6 are in lieu of, and Motorola disclaims, any and all other warranties (express or implied, oral or written) with respect to the Software or Documentation, including, without limitation, any and all implied warranties of condition, title, non-infringement, merchantability, or fitness for a particular purpose or use by Licensee (whether or not Motorola knows, has reason to know, has been advised, or is otherwise aware of any such purpose or use), whether arising by law, by reason of custom or usage of trade, or by course of dealing. In addition, Motorola disclaims any warranty to any person other than Licensee with respect to the Software or Documentation.

## **Section 7 TRANSFERS**

Licensee will not transfer the Software or Documentation to any third party without Motorola's prior written consent. Motorola's consent may be withheld at its discretion and may be conditioned upon transferee paying all applicable license fees and agreeing to be bound by this Agreement. If the Designated Products are Motorola's radio products and Licensee transfers ownership of the Motorola radio products to a third party, Licensee may assign its right to use the Software (other than CPS and Motorola's FLASHport® software) which is embedded in or furnished for use with the radio products and the related Documentation; *provided* that Licensee transfers all copies of the Software and Documentation to the transferee, and Licensee and the transferee sign a transfer form to be provided by Motorola upon request, obligating the transferee to be bound by this Agreement.



## **Section 8 TERM AND TERMINATION**

8.1 Licensee's right to use the Software and Documentation will begin when the Primary Agreement is signed by both parties and will continue for the life of the Designated Products with which or for which the Software and Documentation have been provided by Motorola, unless Licensee breaches this Agreement, in which case this Agreement and Licensee's right to use the Software and Documentation may be terminated immediately upon notice by Motorola.

8.2 Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Motorola that all copies of the Software have been removed or deleted from the Designated Products and that all copies of the Software and Documentation have been returned to Motorola or destroyed by Licensee and are no longer in use by Licensee.

8.3 Licensee acknowledges that Motorola made a considerable investment of resources in the development, marketing, and distribution of the Software and Documentation and that Licensee's breach of this Agreement will result in irreparable harm to Motorola for which monetary damages would be inadequate. If Licensee breaches this Agreement, Motorola may terminate this Agreement and be entitled to all available remedies at law or in equity (including immediate injunctive relief and repossession of all non-embedded Software and associated Documentation unless Licensee is a Federal agency of the United States Government).

## **Section 9 Commercial Computer Software**

9.1 *This Section 9 only applies to U.S. Government end users.* The Software, Documentation and updates are commercial items as that term is defined at 48 C.F.R. Part 2.101, consisting of "commercial computer software" and "computer software documentation" as such terms are defined in 48 C.F.R. Part 252.227-7014(a)(1) and 48 C.F.R. Part 252.227-7014(a)(5), and used in 48 C.F.R. Part 12.212 and 48 C.F.R. Part 227.7202, as applicable. Consistent with 48 C.F.R. Part 12.212, 48 C.F.R. Part 252.227-7015, 48 C.F.R. Part 227.7202-1 through 227.7202-4, 48 C.F.R. Part 52.227-19, and other relevant sections of the Code of Federal Regulations, as applicable, the Software, Documentation and Updates are distributed and licensed to U.S. Government end users: (i) only as commercial items, and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions contained herein.

9.2 If Licensee is licensing Software for end use by the United States Government or a United States Government agency, Licensee may transfer such Software license, but only if: (i) Licensee transfers all copies of such Software and Documentation to such United States Government entity or interim transferee, and (ii) Licensee has first obtained from the transferee (if applicable) and ultimate end user an enforceable end user license agreement containing restrictions substantially identical to the ones contained in this Agreement. Except as stated in the foregoing, Licensee and any transferee(s) authorized by this subsection 9.2 may not otherwise use or transfer or make available any Motorola software to any third party nor permit any party to do so.

## **Section 10 CONFIDENTIALITY**

Licensee acknowledges that the Software and Documentation contain Motorola's valuable proprietary and Confidential Information and are Motorola's trade secrets, and that the provisions in the Primary Agreement concerning Confidential Information apply.

## **Section 11 LIMITATION OF LIABILITY**

The Limitation of Liability provision is described in the Primary Agreement.

## **Section 12 NOTICES**

Notices are described in the Primary Agreement.

## **Section 13      GENERAL**

13.1.    **COPYRIGHT NOTICES.** The existence of a copyright notice on the Software will not be construed as an admission or presumption of publication of the Software or public disclosure of any trade secrets associated with the Software.

13.2.    **COMPLIANCE WITH LAWS.** Licensee acknowledges that the Software is subject to the laws and regulations of the United States and Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Motorola and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the United States Government or any of its agencies at the time of the action, requires an export license or other governmental approval. Violation of this provision is a material breach of this Agreement.

13.3 **FUTURE REGULATORY REQUIREMENTS.** The Parties acknowledge and agree that this is an evolving technological area and therefore, laws and regulations regarding Services and use of Solution may change. Changes to existing Services or the Solution required to achieve regulatory compliance may be available for an additional fee. Any required changes may also impact the price for Services.

13.4.    **ASSIGNMENTS AND SUBCONTRACTING.** Motorola may assign its rights or subcontract its obligations under this Agreement, or encumber or sell its rights in any Software, without prior notice to or consent of Licensee.

13.5.    **GOVERNING LAW.** This Agreement is governed by the laws of the United States to the extent that they apply and otherwise by the internal substantive laws of the State to which the Software is shipped if Licensee is a sovereign government entity, or the internal substantive laws of the State of Illinois if Licensee is not a sovereign government entity. The terms of the U.N. Convention on Contracts for the International Sale of Goods do not apply. In the event that the Uniform Computer Information Transaction Act, any version of this Act, or a substantially similar law (collectively "UCITA") becomes applicable to a party's performance under this Agreement, UCITA does not govern any aspect of this Agreement or any license granted under this Agreement, or any of the parties' rights or obligations under this Agreement. The governing law will be that in effect prior to the applicability of UCITA.

13.6.    **THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of Motorola and Licensee. No third party has the right to make any claim or assert any right under this Agreement, and no third party is deemed a beneficiary of this Agreement. Notwithstanding the foregoing, any licensor or supplier of third party software included in the Software will be a direct and intended third party beneficiary of this Agreement.

13.7.    **SURVIVAL.** Sections 4, 5, 6.4, 7, 8, 9, 10, 11 and 13 survive the termination of this Agreement.

13.8.    **ORDER OF PRECEDENCE.** In the event of inconsistencies between this Exhibit and the Primary Agreement, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the Primary Agreement or any other exhibit as it applies to any other subject matter.

13.9.    **SECURITY.** Motorola uses reasonable means in the design and writing of its own Software and the acquisition of third party Software to limit Security Vulnerabilities. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in Section 6 of this Agreement.



**Exhibit B**  
**PAYMENT Terms**

Except for a payment that is due on the Effective Date, the "Customer" will make payments to Motorola Solutions within thirty days after the date of each invoice. The "Customer" will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution and in accordance with the following milestones.

1. Factory Testing, Certification and Delivery

Aggregate payments upon completion of Delivery to the "Customer" shall be in an amount equal 48% of the Contract Price of the System, payable on a site by site basis.

2. System Product Installation

Aggregate payments upon completion of System Product Installation shall be in an amount equal to 20% of the Contract Price of the System, payable on a site by site basis.

3. Testing of System Products

Aggregate payments upon completion of System Product Testing shall be in an amount equal to 18% of the Contract Price of the System, payable on a site by site basis.

4. Final System Acceptance

Payment of all "hold back" funds upon Final System Acceptance. An amount equal to 14% of the Contract Price of the System.

**If Subscribers are purchased, 100% of the Subscriber Contract Price will be invoiced upon shipment (as shipped).**

Motorola shall make partial shipments of equipment and will request payment upon shipment of such equipment. In addition, Motorola shall invoice for installations completed on a site-by-site basis or when professional services are completed, when applicable. The value of the equipment shipped/services performed will be determined by the value shipped/services performed as a percentage of the total milestone value. Unless otherwise specified, contract discounts are based upon all items proposed and overall system package. For invoicing purposes only, discounts will be applied proportionately to the FNE and Subscriber equipment values to total contract price. Overdue invoices will bear simple interest at the maximum allowable rate by state law.

**For Lifecycle Support Plan and Subscription Based Services:**

**Motorola will invoice Customer annually in advance of each year of the plan.**

Administrative roles are varied and their specific duties and qualifications will be determined by the complexity and requirements of each project.

**DRAFT**

**EXHIBIT D**

**System Acceptance Certificate**

**Customer Name:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

This System Acceptance Certificate memorializes the occurrence of System Acceptance. Motorola and Customer acknowledge that:

1. The Acceptance Tests set forth in the Acceptance Test Plan have been successfully completed.
2. The System is accepted.

Customer Representative:

Motorola Representative:

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**FINAL PROJECT ACCEPTANCE:**

Motorola has provided and Customer has received all deliverables, and Motorola has performed all other work required for Final Project Acceptance.

Customer Representative:

Motorola Representative:

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



This Addendum to the Communications System and Services Agreement or other previously executed Agreement currently in force, as applicable (“Primary Agreement”) provides additional or different terms and conditions to govern the sale of Maintenance and Support services. The terms in this Addendum are integral to and incorporated into the Primary Agreement signed by the Parties.

**1. DEFINITIONS**

All capitalized terms not otherwise defined herein shall have the same meaning as defined in the Agreement.

**2. SCOPE**

Motorola will provide Maintenance and Support, and if applicable SUA Services as further described in the applicable Statement of Work, or attachment to Motorola’s proposal for additional services.

**3. TERMS AND CONDITIONS**

The terms of the Primary Agreement combined with the terms of this Addendum will govern the products and services offered pursuant to this Addendum. To the extent there is a conflict between the terms and conditions of the Primary Agreement and the terms and conditions of this Addendum, this Addendum takes precedence.

3.1 PURCHASE ORDER ACCEPTANCE. Purchase orders for additional, continued, or expanded maintenance and software support, during the Warranty Period or after the Warranty Period, become binding only when accepted in writing by Motorola.

3.2 START DATE. The “Start Date” for Maintenance and Support Services will be indicated in the proposal or a cover page entitled “Service Agreement”.

3.3 AUTO RENEWAL. Unless the cover page or SOW specifically states a termination date or one Party notifies the other in writing of its intention to discontinue the Services, this Agreement will renew for an additional one (1) year term on every anniversary of the Start Date. At the anniversary date, Motorola may adjust the price of the Services to reflect the renewal rate.

3.4 TERMINATION. Written notice of intent to terminate must be provided thirty (30) days or more prior to the anniversary date. If Motorola provides Services after the termination or expiration of this Addendum, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola’s then effective hourly rates. In the event Customer elects to terminate this Agreement for any reason other than default, Customer shall pay Motorola for all services performed.

3.4.1 Unearned Discount: If the Customer terminates a multi-year Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination equal to the discount applied to the last three (3) years of Service payments for the original Term. This is not a penalty but a reconciliation of the discounted pricing schedule for a multi-year commitment.

3.5 EQUIPMENT DEFINITION. For maintenance and support services, Equipment will be defined to mean the hardware specified in the applicable SOW or attachments to the maintenance and support proposal.

3.6 ADDITIONAL HARDWARE. If Customer purchases additional hardware from Motorola that becomes part of the System, the additional hardware may be added to this Agreement and will be billed at the applicable rates after the warranty period for that additional equipment expires. Such hardware will be included in the definition of Equipment.

3.7 MAINTENANCE. Equipment will be maintained at levels set forth in the manufacturer's product manuals and routine procedures that are prescribed by Motorola will be followed. Motorola parts or parts of equal quality will be used for Equipment maintenance.

3.8 EQUIPMENT CONDITION. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Addendum. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay maintenance and support fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically maintained for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to maintain that Equipment.

3.9 EQUIPMENT FAILURE. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement and applicable SOW.

3.10 INTRINSICALLY SAFE. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

#### 3.11 EXCLUDED SERVICES.

a) Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

b) Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

3.12 TIME AND PLACE. Service will be provided at the location specified in this Addendum and/or the SOW. When Motorola performs maintenance, support, or installation at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Addendum or applicable SOW, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Addendum or applicable SOW, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

3.13 CUSTOMER CONTACT. Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

## 4. PAYMENT

4.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges



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will be billed monthly, and Customer must pay each invoice in U.S. dollars within thirty (30) days of the invoice date. Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. The Maintenance Price for the 6 years of services is \$168,013.49, excluding applicable sales or use taxes but including discounts as more fully set forth in the pricing pages

4.2 For multi-year service agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

5. ENTIRE AGREEMENT. This Addendum, any related attachments, and the Primary Agreement, constitutes the entire agreement of the Parties regarding the subject matter of this Addendum and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Addendum may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Addendum, even if a representative of each Party signs that document.

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**SUA II ADDENDUM**

This Addendum to the Communications System and Services Agreement or other previously executed Agreement currently in force, as applicable (“Primary Agreement”) provides additional or different terms and conditions to govern the sale of SUA II services. The terms in this Addendum are integral to and incorporated into the Primary Agreement signed by the Parties.

**1. DEFINITIONS**

All capitalized terms not otherwise defined herein shall have the same meaning as defined in the Agreement.

“SUA” or “SUA II” means Motorola’s Software Upgrade Agreement program.

**2. SCOPE**

Motorola will provide SUA Services as further described in the applicable Statement of Work, or attachment to Motorola’s proposal for additional services.

**3. TERMS AND CONDITIONS**

The terms of the Primary Agreement combined with the terms of this Addendum will govern the products and services offered pursuant to this Addendum. To the extent there is a conflict between the terms and conditions of the Primary Agreement and the terms and conditions of this Addendum, this Addendum takes precedence.

**3.2 SUA SERVICES**

3.2.1 **PURCHASE ORDER ACCEPTANCE.** Purchase orders for SUA services and software support after the Warranty Period, become binding only when accepted in writing by Motorola.

3.2.2 The Software License Agreement included as Exhibit A to the Primary Agreement applies to any Motorola Software provided as part of the SUA transactions.

3.2.3 The term of this Addendum is 6 years, commencing one year after system acceptance. The SUA Price for the 6 years of services is \$58,517.61, excluding applicable sales or use taxes but including discounts as more fully set forth in the pricing pages. Because the SUA is a subscription service as more fully described in the applicable SUA Statement of Work, payment from Customer is due in advance and will not be in accordance with any Payment Milestone Schedule.

3.2.4 The System upgrade will be scheduled during the subscription period and will be performed when Motorola’s system upgrade operation resources are available. Because there might be a significant time frame between when this Amendment is executed and when a System upgrade transaction is performed, Motorola may substitute any of the promised Equipment or Software so long as the substitute is equivalent or superior to the initially promised Equipment or Software.

3.2.5 Acceptance of a SUA transaction occurs when the Equipment (if any) and Software are delivered and the SUA services are fully performed; there is no Acceptance Testing with a SUA transaction.

3.2.6 The Warranty Period for any Equipment or Motorola Software provided under a SUA transaction will commence upon shipment and not on System Acceptance or Beneficial Use, and is for a period of ninety (90) days rather than one (1) year. The ninety (90) day warranty for SUA services is set forth in the SUA Statement of Work.



3.2.7 In addition to the description of the SUA services and exclusions provided in the SUA Statement of Work, the following apply:

- a) Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment.
- b) SUA services exclude the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards; excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.
- c) Unless specifically included in this Addendum or the SUA Statement of Work, SUA services exclude items that are consumed in the normal operation of the Equipment; accessories; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.
- d) Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available during the performance of the SUA services.

3.2.8 The SUA annualized price is based on the fulfillment of the two year cycle. If Customer terminates this service during a two year cycle, except for Motorola's default, then Customer will be required to pay for the balance of payments owed for the two year cycle if a major system release has been implemented before the point of termination.

3.2.9 If Customer terminates this service and contractual commitment before the end of the 6 year term, for any reason other than Motorola's default, then the Customer will pay to Motorola a termination fee equal to the discount applied to the last three years of service payments related to the 6 year commitment.

3.2.10 SUA INFLATION ADJUSTMENT. For multi-year agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the new year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base).

4. ENTIRE AGREEMENT. This Addendum, any related attachments, and the Primary Agreement, constitutes the entire agreement of the Parties regarding the subject matter of this Addendum and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Addendum may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Customer purchase or purchase order, acknowledgment or other form will not be considered an amendment or modification of this Addendum, even if a representative of each Party signs that document.

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## Executive Session

It is anticipated that the Board of Selectmen will vote to enter into Executive Session to discuss pending litigation.