

Board of Selectmen Meeting

June 9, 2021

Notice & Agenda

\*REVISION 1 ADD Item 8

Notice is hereby given that the Westport Board of Selectmen, Traffic Authority, and Water Pollution Control Authority will hold a public meeting on Wednesday, June 9, 2021, at 9:00 AM in the Westport Town Hall Auditorium, 110 Myrtle Avenue, Westport, Connecticut. Emails to the Board of Selectmen *prior to the meeting* may be sent to [selectman@westportct.gov](mailto:selectman@westportct.gov). Agenda to include but not be limited to the following items (subject to revision):

1. To take such action as the meeting may determine to approve the Minutes of the Board of Selectmen's and Water Pollution Control Authority's meeting of May 26, 2021.
2. To take such action as the meeting may determine, upon the request of the Finance Director, to approve the Audit Engagement Letter between the Town and CliftonLarsonAllen as it relates to the June 30, 2021 year end audit.
3. To take such action as the meeting may determine to approve a Lease Modification to the Lease Agreement between the Town of Westport and American Tower Corporation, dated September 9, 2003, for the purpose of replacing the existing town-owned communication infrastructure in accordance with the approved public safety communication system upgrade.
4. To take such action as the meeting may determine to approve the Contract Extension Agreement between the Town of Westport and Bench Strength Partners, Inc. as it relates to the Town-owned cell tower at 515 Post Road East, extending the term of the existing Exclusive Representation Agreement for a period of five years.
5. To take such action as the meeting may determine, to approve the Master Services Agreement between the Town of Westport and LCT Software LLC, for a subscription to the DigEplan cloud-based service for electronic plan review to facilitate online land use permitting through the Accela platform.
6. To take such action as the meeting may determine, to approve the Consulting and Professional Services Agreement between the Town of Westport and Vision33 Inc. for the integration of DigEplan software into the Town's Accela permitting platform.
7. To take such action as the meeting may determine, acting in its capacity as the Water Pollution Control Authority, to approve the request for the supplemental sanitary sewer connection at 950 Post Road East, contingent upon compliance with the WPCA Collection System Supervisor's letter of May 28, 2021.

**\*REVISION 06-07-2021**

8. To take such action as the meeting may determine, upon the request of the Audit Manager, to approve the Audit Engagement Letter between the Town of Westport and CliftonLarsonAllen as it relates to the Systems Utilization Assessment of Human Resources & Payroll Functions for the Town and the Westport Public Schools.

James S. Marpe, First Selectman

*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.*

ITEM #1

1. To take such action as the meeting may determine to approve the Minutes of the Board of Selectmen's and Water Pollution Control Authority's meeting of May 26, 2021.

Board of Selectmen Meeting  
May 26, 2021  
DRAFT MINUTES

The Westport Board of Selectmen, Traffic Authority, and Water Pollution Control Authority held a public meeting on Wednesday, May 26, 2021, at 9:00 AM in the Westport Town Hall Auditorium, 110 Myrtle Avenue, Westport, Connecticut. In attendance were Jim Marpe, Jennifer Tooker, Melissa Kane, Eileen Flug, Jennifer Fava, Peter Ratkiewich, Bryan Thompson, members of the public, and Eileen Francis, recording secretary.

<https://play.champds.com/westportct/event/73>

MINUTES

1. Presented by Jennifer Tooker. 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 May 12, 2021, are hereby APPROVED.

APPROVE REQUEST FOR EXTENSION FOR PROGRESSIVE DIAGNOSTICS USE OF CT DOT LOT #8 FOR PCR COVID-19 TESTING

2. Presented by Assistant Town Attorney Eileen Flug. Ms. Flug indicated that the previous agreement required Board approval for an extension. She noted that Deputy Police Chief Sam Arciola would be the authorized contact administrator should an additional extension be requested. Upon motion by Melissa Kane, seconded by Jim Marpe and passing by a vote of 3-0, it was:

RESOLVED, that the request for an extension by Progressive Diagnostics, LLC for the use of DOT Lot #8 at the Metro North Saugatuck Train Station for Drive-Through PCR COVID-19 testing is hereby APPROVED.

APPROVE PROPOSED PICKLEBALL HANDPASS FEES

3. Presented by Parks & Recreation Director Jennifer Fava. Upon motion by Jim Marpe, seconded by Melissa Kane and passing by a vote of 3-0, it was:

RESOLVED, that upon the recommendation of the Parks & Recreation Commission and Racquets Advisory Committee the proposed Pickleball handpass fees:  
\$40 Adult Handpass  
\$30 Senior Handpass

Are hereby APPROVED

WITHDRAWN

4. ~~To take such action as the meeting may determine, upon the request of the Finance Director, to approve the Audit Engagement Letter between the Town and CliftonLarsonAllen as it relates to the June 30, 2021, year-end audit.~~

*Items #5 – 8 are include in the WPCA Minutes of 05-26-2021*

AUTHORIZE JAMES S. MARPE TO SIGN LOCAL PROGRAM SUPPLEMENTAL APPLICATION AND ASSOCIATED AGREEMENTS FOR STATE PROJECT 9158-0021 KINGS HIGHT WAY NORTH BRIDGE

9. Presented by Director of Public Works Peter Ratkiewich. Upon motion by Melissa Kane, seconded by Jennifer Tooker and passing by a vote of 3-0, it was:

RESOLVED, that James S. Marpe, First Selectman of the Town of Westport, is hereby authorized to sign the LOCAL PROGRAM SUPPLEMENTAL APPLICATION and any associated agreements between the State of Connecticut and the Town of Westport for State Project No. 9158-0021, Kings Highway North over Willow Brook in Westport, Bridge No. 158021.

ADJOURNMENT

Upon motion by Jim Marpe, seconded by Melissa Kane and passing by a vote of 3-0, the meeting adjourned at 9:50 AM.

*/Eileen Francis/*  
Eileen Francis, Recording Secretary

Water Pollution Control Authority  
May 26, 2021  
DRAFT MINUTES

The Westport Board of Selectmen, acting in its capacity as the Water Pollution Control Authority, held a public meeting on Wednesday, May 26, 2021, at 9:00 AM in the Westport Town Hall Auditorium, 110 Myrtle Avenue, Westport, Connecticut. In attendance were Jim Marpe, Jennifer Tooker, Melissa Kane, Eileen Flug, Jennifer Fava, Peter Ratkiewich, Bryan Thompson, members of the public, and Eileen Francis, recording secretary.

<https://play.champds.com/westportct/event/73>

APPROVE SUPPLEMENTAL SANITARY SEWER CONNECTION AT 27 NARROW ROCKS ROAD

1. WPCA Item #1 (BOS Item #5) 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 acting in its capacity as the Water Pollution Control Authority, the request for the supplemental sanitary sewer connection at 27 Narrow Rocks Road, contingent upon compliance with the WPCA Collection System Supervisor's letter of May 18, 2021, is hereby APPROVED.

APPROVE FINAL BENEFIT ASSESSMENTS TO BE LEVIED AGAINST SUPPLEMENTAL SEWER CONNECTIONS APPROVED IN 2020

2. WPCA Item #2 (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 acting in its capacity as the Water Pollution Control Authority (WPCA) and in accordance with Connecticut General Statutes, the final benefit assessments to be levied against properties that obtained supplemental sanitary sewer connection approval during 2020, as revised, are hereby APPROVED.

APPROVE PROPOSED MINIMAL USE CHARGE RATE STRUCTURE FOR 2019-2020 FY, DUE AND PAYABLE JULY 1, 2021

3. WPCA Item #3 (BOS Item #7) was presented by WPCA Collection System Supervisor Bryan Thompson. Upon motion by Melissa Kane, seconded by Jim Marpe and passing by a vote of 3-0, it was:

RESOLVED, that acting in its capacity as the Water Pollution Control Authority, the proposed minimal sewer use charge rate structure which shall be applicable to the 2019-2020 fiscal year and due and payable July 1, 2021, as follows:

<b>Description</b>	<b>Proposed 2021 Rates</b>	<b>2020 Rates</b>
Use-Charge Rate per CCF Discharged	\$6.40	\$6.40
Minimum Use Charge Rate	\$375.00	\$350.00
Properties on Public Water other than Aquarion	\$500.00	\$350.00
Properties on Un-Metered Water Supply or Well Water	\$500.00	\$350.00

Is hereby APPROVED.

APPROVE SUPPLEMENTAL SANITARY SEWER CONNECTION AND ASSESSMENT AT 136 RIVERSIDE AVENUE

4. WPCA Item #4 (BOS Item #8) was presented by WPCA Collection System Supervisor Bryan Thompson. Mr. Thompson explained that this Town-owned property is leased by the applicant; the Planning & Zoning Commission issued a positive 8-24 report and a Special Permit for the property, and, although it is town property, the increase in the supplemental benefit assessment units and connection shall be assessed to the lessee. Upon motion by Jim Marpe, seconded by Melissa Kane and passing by a vote of 3-0, it was:

RESOLVED, that acting in its capacity as the Water Pollution Control Authority, the request for the supplemental sanitary sewer connection at 136 Riverside Avenue, contingent upon compliance with the WPCA Collection System Supervisor's letter of May 21, 2021, is hereby APPROVED.

ADJOURNMENT

Upon motion by Jim Marpe, seconded by Melissa Kane and passing by a vote of 3-0, the meeting adjourned at 9:50 AM.

*/Eileen Francis/*  
Eileen Francis, Recording Secretary

ITEM #2

2. To take such action as the meeting may determine, upon the request of the Finance Director, to approve the Audit Engagement Letter between the Town and CliftonLarsonAllen as it relates to the June 30, 2021 year end audit.



CLA (CliftonLarsonAllen LLP)  
29 South Main Street  
4<sup>th</sup> Floor  
West Hartford, Connecticut 06107  
860-561-4000 | fax 860-521-9241  
CLAconnect.com

May 5, 2021

Mr. James Marpe, First Selectman and Management  
Town of Westport, Connecticut  
110 Myrtle Avenue  
Westport, CT 06880

Dear Ladies and Gentlemen:

We are pleased to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the audit and nonaudit services CliftonLarsonAllen LLP ("CLA," "we," "us," and "our") will provide for the Town of Westport, Connecticut ("you," "your," or "the entity") for the year ended June 30, 2021.

Vanessa E. Rossitto, CPA is responsible for the performance of the audit engagement.

#### **Audit services**

We will audit the financial statements of the governmental activities, each major fund, and the aggregate remaining fund information, which collectively comprise the basic financial statements of the Town of Westport, Connecticut, as of and for the year ended June 30, 2021, and the related notes to the financial statements.

The Governmental Accounting Standards Board (GASB) provides for certain required supplementary information (RSI) to accompany the entity's basic financial statements. The RSI will be subjected to certain limited procedures, but will not be audited.

1. Management's discussion and analysis.
2. Budgetary comparison schedules.
3. GASB-required supplementary pension and OPEB information.

We will also evaluate and report on the presentation of the following supplementary information other than RSI accompanying the financial statements in relation to the financial statements as a whole:

1. Schedule of expenditures of federal awards
2. Schedule of expenditures of state financial assistance
3. Combining and individual fund financial statements

The following information other than RSI accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements and our auditors' report will not provide an opinion or any assurance on that information:

1. Introductory section
2. Statistical tables

#### **Nonaudit services**

We will also provide the following nonaudit services:

- Preparation of your financial statements, schedule of expenditures of federal awards, schedule of expenditures of state financial assistance, and related notes.
- Preparation and submission of the electronic Data Collection Form SF-SAC
- Preparation of adjusting journal entries.

#### **Audit objectives**

The objective of our audit is the expression of opinions about whether your basic financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP). Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS); the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and the Connecticut State Single Audit Act (State Single Audit). Our audit will include tests of your accounting records, a determination of major program(s) in accordance with the Uniform Guidance and the State Single Audit, and other procedures we consider necessary to enable us to express opinions and render the required reports. We will apply certain limited procedures to the RSI in accordance with U.S. GAAS. However, we will not express an opinion or provide any assurance on the RSI because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. We will also perform procedures to enable us to express an opinion on whether the supplementary information as identified above other than RSI accompanying the financial statements is fairly stated, in all material respects, in relation to the financial statements as a whole.

The objectives of our audit also include:

- Reporting on internal control over financial reporting and compliance with the provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Reporting on internal control over compliance related to major programs and expressing an opinion (or disclaimer of opinion) on compliance with federal and state statutes, regulations, and the terms and conditions of federal and state awards that could have a direct and material effect on each major program in accordance with the Uniform Guidance and the State Single Audit.

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states (1) that the purpose of the report is solely to describe the scope of our testing of internal control and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Both the Uniform Guidance report and the State Single Audit report on internal control over compliance will each include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the result of that testing based on the requirements of the Uniform Guidance and the State Single Audit, respectively. All reports will state that the report is not suitable for any other purpose.

We will issue written reports upon completion of our audit of your financial statements and compliance with requirements applicable to major programs. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement. If our opinions on the financial statements or the single audit compliance opinions are other than unmodified, we will discuss the reasons with you in advance. If circumstances occur related to the condition of your records, the availability of sufficient, appropriate audit evidence, or the existence of a significant risk of material misstatement of the financial statements or material noncompliance caused by error, fraudulent financial reporting, or misappropriation of assets, which in our professional judgment prevent us from completing the audit or forming opinions on the financial statements or an opinion on compliance, we retain the right to take any course of action permitted by professional standards, including declining to express opinions or issue reports, or withdrawing from the engagement.

#### **Auditor responsibilities, procedures, and limitations**

We will conduct our audit in accordance with U.S. GAAS and the standards for financial audits contained in *Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements as a whole are free from material misstatement, whether due to fraud or error. An audit involves performing procedures to obtain sufficient appropriate audit evidence about the amounts and disclosures in the basic financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the basic financial statements.

There is an unavoidable risk, because of the inherent limitations of an audit, together with the inherent limitations of internal control, that some material misstatements or noncompliance may not be detected, even though the audit is properly planned and performed in accordance with U.S. GAAS, *Government Auditing Standards*, the Uniform Guidance and the State Single Audit. Because we will not perform a detailed examination of all transactions, material misstatements, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity, may not be detected. Because the determination of waste and abuse is subjective, *Government Auditing Standards* do not require auditors to perform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform the appropriate level of management and those charged with governance of any material errors, fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management and those charged with governance of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a single audit.

In making our risk assessments, we consider internal control relevant to the entity's preparation and fair presentation of the basic financial statements and compliance in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting fraud or errors that are material to the financial statements and to preventing and detecting misstatements resulting from noncompliance with provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance and the State Single Audit, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with the direct and material compliance requirements applicable to each major federal and state award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance and the State Single Audit.

An audit is not designed to provide assurance on internal control or to identify deficiencies, significant deficiencies, or material weaknesses in internal control. However, we will communicate to you in writing significant deficiencies or material weaknesses in internal control relevant to the audit of the basic financial statements that we identify during the audit that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, the Uniform Guidance, and the State Single Audit.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the entity's compliance with the provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

We will include in our report on internal control over financial reporting and on compliance relevant information about any identified or suspected instances of fraud and any identified or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements that may have occurred that are required to be communicated under *Government Auditing Standards*.

Both the Uniform Guidance and the State Single Audit require that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal and state statutes, regulations, and the terms and conditions of federal and state awards that may have a direct and material effect on each of the

entity's major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the "OMB Compliance Supplement" and the "Compliance Supplement to the State Single Audit Act" for the types of compliance requirements that could have a direct and material effect on each of the entity's major programs. The purpose of these procedures will be to express an opinion on the entity's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance and the State Single Audit.

We will evaluate the presentation of the schedule of expenditures of federal awards and the schedule of expenditures of state financial assistance accompanying the financial statements in relation to the financial statements as a whole. We will make certain inquiries of management and evaluate the form, content, and methods of preparing each schedule to determine whether the information complies with U.S. GAAP, the Uniform Guidance, and the State Single Audit, the method of preparing has not changed from the prior period, and the information is appropriate and complete in relation to our audit of the financial statements. We will compare and reconcile each schedule to the underlying accounting records and other records used to prepare the financial statements or to the financial statements themselves.

Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

#### **Management responsibilities**

Our audit will be conducted on the basis that you (management and, when appropriate, those charged with governance) acknowledge and understand that you have certain responsibilities that are fundamental to the conduct of an audit.

You are responsible for the preparation and fair presentation of the financial statements, RSI, the schedule of expenditures of federal awards, and the schedule of expenditures of state financial assistance in accordance with U.S. GAAP. Management is also responsible for identifying all federal and state awards received, understanding and complying with the compliance requirements, and for the preparation of the schedule of expenditures of federal awards, and schedule of expenditures of state financial assistance (including notes and noncash assistance received) in accordance with the requirements of the Uniform Guidance and the State Single Audit.

Management's responsibilities include the selection and application of accounting principles; recording and reflecting all transactions in the financial statements; determining the reasonableness of significant accounting estimates included in the financial statements; adjusting the financial statements to correct material misstatements; and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole. Management is responsible for compliance with applicable laws and regulations and the provisions of contracts and grant agreements, including compliance with federal and state statutes, regulations, and the terms and conditions of federal and state awards applicable to the entity's federal and state programs. Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

You are responsible for the design, implementation, and maintenance of effective internal control, including internal control over compliance, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; and that there is reasonable assurance that government programs are administered in compliance with compliance requirements.

You are responsible for the design, implementation, and maintenance of internal controls to prevent and detect fraud; assessing the risk that the financial statements may be materially misstated as a result of fraud; and for informing us about all known or suspected fraud affecting the entity involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for implementing systems designed to achieve compliance with applicable laws and regulations and the provisions of contracts and grant agreements, including compliance with federal and state statutes, regulations, and the terms and conditions of federal and state awards applicable to the entity's federal and state programs; identifying and ensuring that the entity complies with applicable laws, regulations, contracts, and grant agreements, including compliance with federal and state statutes, regulations, and the terms and conditions of federal and state awards applicable to the entity's federal and state programs; and informing us of all instances of identified or suspected noncompliance whose effects on the financial statements should be considered.

You are responsible for taking timely and appropriate steps to remedy any fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that we may report. Additionally, as required by the Uniform Guidance and the State Single Audit, it is management's responsibility to evaluate and monitor noncompliance with federal and state statutes, regulations, and the terms and conditions of federal and state awards; take prompt action when instances of noncompliance are identified, including noncompliance identified in audit findings; and to follow up and take prompt corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan.

You are responsible for ensuring that management is reliable and for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters, and for the accuracy and completeness of that information, and for ensuring the information is reliable and properly reported; (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance and the State Single Audit; (3) additional information that we may request for the purpose of the audit; and (4) unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence. You agree to inform us of events occurring or facts discovered subsequent to the date of the financial statements that may affect the financial statements.

You agree to include our report on the schedule of expenditures of federal awards and our report on the schedule of expenditures on state financial assistance in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards and the schedule of expenditures of state financial assistance. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards and the schedule of expenditures of state financial assistance that includes our

report thereon or make the audited financial statements readily available to intended users of the schedule of expenditures of federal awards and the schedule of expenditures of state financial assistance no later than the date the schedule of expenditures of federal awards and the schedule of expenditures of state financial assistance are issued with our report thereon. Your responsibilities include acknowledging to us in the representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance, and the presentation of the schedule of expenditures of state financial assistance in accordance with the state single audit; (2) you believe the schedule of expenditures of federal awards, including its form and content, is fairly presented in accordance with the Uniform Guidance, and the schedule of expenditures of state financial assistance, including its form and content, is fairly presented in accordance with the state single audit; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards and the schedule of expenditures of state financial assistance.

Management is responsible for the preparation and fair presentation of other supplementary information in accordance with U.S. GAAP. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon or make the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information is issued with our report thereon. You agree to provide us written representations related to the presentation of the supplementary information.

Management is responsible for providing us with a written confirmation concerning representations made by you and your staff to us in connection with the audit and the presentation of the basic financial statements and RSI. During our engagement, we will request information and explanations from you regarding, among other matters, the entity's activities, internal control, future plans, specific transactions, and accounting systems and procedures. The procedures we will perform during our engagement and the conclusions we reach as a basis for our report will be heavily influenced by the representations that we receive in the representation letter and otherwise from you. Accordingly, inaccurate, incomplete, or false representations could cause us to expend unnecessary effort or could cause a material fraud or error to go undetected by our procedures. In view of the foregoing, you agree that we shall not be responsible for any misstatements in the entity's financial statements that we may fail to detect as a result of misrepresentations made to us by you.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies to us of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the "Audit objectives" section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other engagements or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions for the report, and for the timing and format for providing that information.

### **Responsibilities and limitations related to nonaudit services**

For all nonaudit services we may provide to you, management agrees to assume all management responsibilities; oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience to understand and oversee the services; evaluate the adequacy and results of the services; and accept responsibility for the results of the services. Management is also responsible for ensuring that your data and records are complete and that you have received sufficient information to oversee the services.

The responsibilities and limitations related to the nonaudit services performed as part of this engagement are as follows:

- We will prepare a draft of your financial statements, schedule of expenditures of federal awards, schedule of expenditures of state financial assistance and related notes in conformity with U.S. GAAP, the Uniform Guidance and the State Single Audit based on information provided by you. Since the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and schedule of expenditures of state financial assistance is your responsibility, you will be required to acknowledge in the representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and schedule of expenditures of state financial assistance and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, schedule of expenditures of state financial assistance and related notes prior to their issuance and have accepted responsibility for them. You have a responsibility to be in a position in fact and appearance to make an informed judgment on those financial statements, schedule of expenditures of federal awards, and schedule of expenditures of state financial assistance.
- We will prepare a draft of the data collection form. You will be required to review and approve this draft to affirm that it is complete and accurate. We will also submit to the federal audit clearinghouse after your approval.
- We will propose adjusting journal entries as needed. You will be required to review and approve those entries and to understand the nature of the changes and their impact on the financial statements.

These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*.

### **Use of financial statements**

The financial statements and our report thereon are for management's use. If you intend to reproduce and publish the financial statements and our report thereon, they must be reproduced in their entirety. Inclusion of the audited financial statements in a document, such as an annual report or an offering document, should be done only with our prior approval of the document. You are responsible to provide us the opportunity to review such documents before issuance.

If the parties (i.e., you and CLA) agree that CLA will not be involved with your official statements related to municipal securities filings or other offering documents, we will require that any official statements or other offering documents issued by you with which we are not involved clearly indicate that CLA is not involved with the contents of such documents. Such disclosure should read as follows:

CliftonLarsonAllen LLP, our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. CliftonLarsonAllen LLP also has not performed any procedures relating to this offering document.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website or submitted on a regulator website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in those sites or to consider the consistency of other information in the electronic site with the original document.

We may issue preliminary draft financial statements to you for your review. Any preliminary draft financial statements should not be relied on or distributed.

#### **Engagement administration and other matters**

We understand that your employees will prepare all confirmations, account analyses, and audit schedules we request and will locate any documents or invoices selected by us for testing. A list of information we expect to need for our audit and the dates required will be provided in a separate communication.

At the conclusion of the engagement, we will complete the auditor sections of the electronic Data Collection Form SF-SAC and perform the steps to certify the Form SF-SAC and single audit reporting package. It is management's responsibility to complete the auditee sections of the Data Collection Form. We will create the single audit reporting package PDF file for submission; however, it is management's responsibility to review for completeness and accuracy and electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse and, if appropriate, to pass-through entities. The Data Collection Form and the reporting package must be electronically submitted within the earlier of 30 calendar days after receipt of the auditors' reports or nine months after the end of the audit period.

We will make the required submissions to the Connecticut State Office of Policy and Management; however, management is responsible for distribution of the reporting package (including financial statements, schedule of expenditures of state financial assistance, summary schedule of prior audit findings, auditors' reports, and corrective action plan) to State pass-through entities.

We will provide copies of our reports to the entity; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing confidential or sensitive information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the sole and exclusive property of CLA and constitutes confidential and proprietary information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the State of Connecticut, or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit

documentation will be provided under the supervision of CLA personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of seven years after the report release date or for any additional period requested by the State of Connecticut. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

CLA will not disclose any confidential, proprietary, or privileged information of the entity to any persons without the authorization of entity management or unless required by law. This confidentiality provision does not prohibit us from disclosing your information to one or more of our affiliated companies in order to provide services that you have requested from us or from any such affiliated company. Any such affiliated company shall be subject to the same restrictions on the use and disclosure of your information as apply to us.

Our engagement ends on delivery of our signed report. Any additional services that might be requested will be a separate, new engagement. The terms and conditions of that new engagement will be governed by a new, specific engagement letter for that service.

*Government Auditing Standards* require that we make our most recent external peer review report publicly available. The report is posted on our website at [www.CLAconnect.com/Aboutus/](http://www.CLAconnect.com/Aboutus/).

### **Mediation**

Any disagreement, controversy, or claim ("Dispute") that may arise out of any aspect of our services or relationship with you, including this engagement, shall be submitted to non-binding mediation by written notice ("Mediation Notice") to the other party. In mediation, we will work with you to resolve any differences voluntarily with the aid of an impartial mediator.

The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the Dispute.

Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

Any Dispute will be governed by the laws of the state of Minnesota, without giving effect to choice of law principles.

### **Time limitation**

The nature of our services makes it difficult, with the passage of time, to gather and present evidence that fully and fairly establishes the facts underlying any Dispute that may arise between the parties. The parties agree that, notwithstanding any statute or law of limitations that might otherwise apply to a Dispute, including one arising out of this agreement or the services performed under this agreement, for breach of contract or fiduciary duty, tort, fraud, misrepresentation or any other cause of action or remedy, any action or legal proceeding by

you against us must be commenced within twenty-four (24) months ("Limitation Period") after the date when we deliver our final audit report under this agreement to you, regardless of whether we do other services for you relating to the audit report, or you shall be forever barred from commencing a lawsuit or obtaining any legal or equitable relief or recovery.

The Limitation Period applies and begins to run even if you have not suffered any damage or loss or have not become aware of the existence or possible existence of a Dispute.

### **Fees**

Our fixed fee for these services is \$96,250. Our fee includes expenses (including travel, other costs such as report production, word processing, postage, etc., and internal and administrative charges) plus a technology and client support fee of five percent (5%) of all professional fees billed. This fee is based on anticipated cooperation from your personnel and their assistance with preparing confirmations and requested schedules. If the requested items are not available on the dates required or are not accurate, the fees and expenses will likely be higher. If unexpected circumstances require significant additional time, we will advise you before undertaking work that would require a substantial increase in the fee and expense estimates. Our invoices will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 60 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed even if we have not issued our reports. You will be obligated to compensate us for all time expended and related fees and to reimburse us for all out-of-pocket expenditures through the date of termination.

### **Additional work resulting from unanticipated changes in your organization or accounting records**

If your organization undergoes significant changes in key personnel, accounting systems, and/or internal control, we are required to update our audit documentation and audit plan. The following are examples of situations that will require additional audit work:

- Revising documentation of your internal control for changes resulting from your implementation of new information systems
- Deterioration in the quality of the entity's accounting records during the current-year engagement in comparison to the prior-year engagement
- Significant new accounting issues
- New or unusual transactions
- Changes in audit scope or requirements resulting from changes in your activities
- Erroneous or incomplete accounting records
- Evidence of material weaknesses or significant deficiencies in internal control
- Regulatory examination matters

- Implementation or adoption of new or existing accounting, reporting, or regulatory requirements
- New financial statement disclosures

**Changes in engagement timing and assistance by your personnel**

The fee estimate is based on anticipated cooperation from your personnel and their assistance with timely preparation of confirmations and requested schedules. If the requested items are not available on the dates required or are not accurate, we will advise management. Additional time and costs may be necessary because of such unanticipated delays. Examples of situations that may cause our estimated fee to increase include:

- Significant delays in responding to our requests for information such as reconciling variances or providing requested supporting documentation (e.g., invoices, contracts, and other documents)
- Rescheduling our fieldwork
- Identifying a significant number of proposed audit adjustments
- Schedules prepared by your personnel that do not reconcile to the general ledger
- Numerous revisions to information and schedules provided by your personnel
- Restating financial statements for accounting errors in the prior year
- Lack of availability of entity personnel during audit fieldwork

***Changes in accounting and audit standards***

Standard setters and regulators continue to evaluate and modify standards. Such changes may result in new or revised financial reporting and disclosure requirements or expand the nature, timing, and scope of the activities we are required to perform. To the extent that the amount of time required to provide the services described in this letter increases due to such changes, our fee may need to be adjusted. We will discuss such circumstances with you prior to performing the additional work.

***Changes related to COVID-19***

COVID-19 continues to have significant direct and indirect impacts on financial reporting, disclosure requirements, and the nature, timing, and scope of the activities we are required to perform. To the extent that the amount of time required to provide the services described in this letter increases due to such changes, our fee may need to be adjusted. We will discuss such circumstances with you prior to performing the additional work.

***Other fees***

You also agree to compensate us for any time and expenses, including time and expenses of legal counsel, we may incur in responding to discovery requests or participating as a witness or otherwise in any legal, regulatory, or other proceedings that we are asked to respond to on your behalf.

***Finance charges and collection expenses***

You agree that if any statement is not paid within 30 days from its billing date, the unpaid balance shall accrue interest at the monthly rate of one and one-quarter percent (1.25%), which is an annual percentage rate of 15%. In the event that any collection action is required to collect unpaid balances due us, reasonable attorney fees and expenses shall be recoverable.

***Subcontractors***

CLA may, at times, use subcontractors to perform services under this agreement, and they may have access to your information and records. Any such subcontractors will be subject to the same restrictions on the use of such information and records as apply to CLA under this agreement.

**Agreement**

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. This letter constitutes the entire agreement regarding these services and supersedes all prior agreements (whether oral or written), understandings, negotiations, and discussions between you and CLA. If you have any questions, please let us know. Please sign, date, and return the copy of this letter to us to indicate your acknowledgment and understanding of, and agreement with, the arrangements for our audit of your financial statements including the terms of our engagement and the parties' respective responsibilities.

Sincerely,

**CliftonLarsonAllen LLP**



Vanessa E. Rossitto, CPA  
Principal  
860-561-6824  
Vanessa.rossitto@CLAconnect.com

Enclosure

**Response:**

This letter correctly sets forth the understanding of the Town of Westport, Connecticut.

Authorized governance signature: \_\_\_\_\_

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

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

Authorized management signature: \_\_\_\_\_

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

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

## Report on the Firm's System of Quality Control

November 21, 2019

To the Principals of CliftonLarsonAllen LLP  
and the National Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of CliftonLarsonAllen LLP (the firm) applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended May 31, 2019. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary). The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

### Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

### Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

### Required Selections and Considerations

Engagements selected for review included engagements performed under *Government Auditing Standards*, including compliance audits under the Single Audit Act; audits of employee benefit plans; audits performed under FDICIA; audits of broker-dealers; and examinations of service organizations [SOC 1 and SOC 2 engagements].

As a part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

### Opinion

In our opinion, the system of quality control for the accounting and auditing practice of CliftonLarsonAllen LLP applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended May 31, 2019, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. CliftonLarsonAllen LLP has received a peer review rating of *pass*.



Cherry Bekaert LLP

ITEM #3

3. To take such action as the meeting may determine to approve a Lease Modification to the Lease Agreement between the Town of Westport and American Tower Corporation, dated September 9, 2003, for the purpose of replacing the existing town-owned communication infrastructure in accordance with the approved public safety communication system upgrade.



May 11, 2021

Town of Westport  
220 Myrtle Avenue  
Westport, CT 06880

**Re: TOWER USE APPROVAL LETTER AGREEMENT**

ATC Site Name / Number: WSPT-WESTPORT REBUILD CT / 310968

Site Address: 180A Bayberry Lane, Westport, CT

Site Coordinates: Lat. 41° 10' 18" N41.17166667 Long. 73° 19' 42.48" W-73.32846667

To Whom it May Concern:

This Tower Use Approval Letter Agreement issued by American Tower Asset Sub II, LLC ("*American Tower*") contains the terms and conditions that will apply to the Town of Westport's ("*Entrant*") use of the communications tower ("*Tower*") at the above-referenced American Tower Site. Entrant's use of the Tower is permitted by that certain Lease Agreement dated September 29, 2003 (the "*Ground Lease*") and Entrant's rights under this Tower Use Approval Letter Agreement shall expire at the time Entrant's rights to use the Tower expire under said Ground Lease. The equipment exhibit attached hereto as Exhibit A shall memorialize as of the date above, the equipment rights and specifications granted to Entrant for the placement of Entrant's equipment on the Tower ("*Equipment*"). The site sketch attached hereto as Exhibit B shall memorialize the location of Entrant's ground equipment at the Site.

Prior to the commencement of any construction activity, Entrant is required to request a Notice to Proceed from American Tower. Please submit all required Notice to Proceed documentation to Shane.Lieberman@AmericanTower.com. Entrant shall utilize approved American Tower contractors to perform all work at the Site.

The Entrant shall comply with the following safety provisions for the duration of Entrant's use of the Site:

Use: Entrant shall be permitted the non-exclusive right to install, maintain, operate, service, modify and/or replace its Equipment located on the Tower and at the Site, which Equipment shall be utilized for the transmission and reception of wireless voice and data communications signals. Entrant shall identify its Equipment, including its equipment cabinets and coaxial cable (at the top and bottom of the Tower) by labels with Entrant's name, contact phone number and date of installation.

Insurance:

A. Entrant shall maintain the following insurance:

- i) Worker's Compensation Insurance with statutory limits in accordance with all applicable state, federal and maritime laws, and Employers' Liability Insurance with minimum limits of \$500,000.00 per accident/occurrence, or in accordance with all applicable state, federal and maritime laws.



- ii) Commercial General Liability Insurance (Bodily Injury and Property Damage), the limits of liability of which shall not be less than \$100,000.00 per occurrence.

The insurance specified in this Item A shall contain a waiver of subrogation against American Tower and shall name American Tower as additional insured and shall be primary over any insurance coverage in favor of American Tower but only with respect to and to the extent of the insured liabilities assumed by Entrant under this Agreement and shall contain a standard cross-liability endorsement.

B. Entrant shall cause all contractors or subcontractors performing work on behalf of Entrant at the Site to maintain the following insurance:

- i) Worker's Compensation Insurance with statutory limits in accordance with all applicable state, federal and maritime laws, and Employers' Liability Insurance with minimum limits of \$500,000.00 per accident/occurrence, or in accordance with all applicable state, federal and maritime laws.
- ii) Commercial General Liability Insurance (Bodily Injury and Property Damage), the limits of liability of which shall not be less than \$1,000,000.00 per occurrence.
- iii) An umbrella policy of not less than Five Million Dollars (\$5,000,000.00).

Equipment Modifications: Entrant shall submit an application, utilizing American Tower's then current form, to request the right to replace or modify the Entrant's Equipment, alter the frequencies, or increase the ground space. Entrant shall pay for any required structural analysis that may be required as a result of a change in Entrant's equipment located on the Tower. Notwithstanding anything to the contrary contained in this Tower Use Approval Letter Agreement, Entrant's right to modify or add equipment as set forth herein shall be subject to space availability taking into account (i) any pending third party customer applications and/or existing contractual obligations of American Tower, including, without limitation, any interference obligations, rights of third-parties to lease or license such space existing and effective before the date of Entrant's application for such modifications or additions is submitted to American Tower, and (ii) valid safety concerns (reasonable evidence of which shall be provided to Entrant upon request). Entrant shall be responsible for all costs and expenses incurred for the location of Entrant's equipment on the Tower and at the Site. Entrant shall not commence work related to any Equipment modification on the Tower or at the Site until American Tower issues to Entrant a notice to proceed ("NTP"). American Tower shall issue an NTP only upon request from Entrant and receipt of the following complete and accurate documentation:

- (1) reasonable evidence that any contingencies set forth in the approval of Entrant's application have been satisfied;
- (2) reasonable evidence that Entrant has obtained all required governmental approvals including, but not limited to, zoning approvals, building permits, and any applicable environmental approvals including copies of the same;
- (3) a copy of the plans and specifications that have been approved by American Tower for the proposed equipment installation;
- (4) reasonable evidence that any party, other than American Tower but including Entrant, that will be performing the work are on American Tower's approved vendor list, with valid and current worker's compensation and general liability insurance certificates on file with American Tower naming American Tower as an additional insured and which otherwise



satisfy the insurance coverage requirements set forth in this Tower Use Approval Letter Agreement; and  
(5) a construction schedule.

Site Rules and Regulations: Entrant shall comply with the reasonable rules and regulations established from time to time at the Site. Such rules and regulations will not unreasonably interfere with Entrant's use of the Site.

Equipment Removal: Entrant shall have the right to remove all Equipment at Entrant's sole expense provided Entrant repairs any damage to the Site or the Tower caused by such removal. Entrant shall remove all unused Equipment from the Tower and the Site upon Entrant's cessation of the use of said Equipment.

Hazardous Substances: Entrant shall not use, store, dispose, or release any hazardous substances at the Site in violation of applicable law. Hazardous substances shall be defined as any hazardous material or substance which is or becomes defined as a hazardous substance, pollutant or contaminant subject to reporting, investigation or remediation pursuant to applicable law; any substance which is or becomes regulated by any federal, state or local governmental authority; and any oil, petroleum products and their by-products.

Indemnity: Entrant indemnifies American Tower and holds American Tower harmless for any and all costs, demands, damages, suits, expenses, or causes of action (including reasonable attorneys fees and court costs) which arise out of the use and/or occupancy of the Tower or the Site by the Entrant, provided, however this indemnity does not apply to any third party claims to the extent arising from the gross negligence or intentional misconduct of American Tower.

Interference: Notwithstanding anything to the contrary in this Tower Use Approval Letter Agreement, Entrant shall not utilize any frequencies that may cause interference with current tenants located on the Tower.

Utilities: Electricity required for the operation of Entrant's Equipment at the Site is to be provided and paid for by Entrant at its sole cost and expense. Entrant shall be solely responsible for extending utilities to the Site as necessary for the operation of the Entrant's Equipment and for the payment of utility charges including connection charges and security deposits incurred by Entrant.

Warranty: AMERICAN TOWER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ASSOCIATED WITH THE TOWER OR THE SITE. LICENSEE HEREBY ACCEPTS THE TOWER "AS IS, WHERE IS, WITH ALL FAULTS".

The Parties agree that (i) a digital or electronic signature on this Tower Use Approval Letter Agreement and/or (ii) a fully executed scanned or electronically reproduced copy or image of this Tower Use Approval Letter Agreement shall be deemed an original.

[Signatures appear on the next page]



In order to indicate Entrant's agreement with the terms of this Tower Use Approval Letter Agreement, please have a duly authorized representative of Entrant sign and return two originals to American Tower. The agreement set forth in this Tower Use Approval Letter Agreement shall not be effective until it is duly executed and delivered by both American Tower and Entrant.

AMERICAN TOWER  
American Tower Asset Sub II, LLC, a Delaware limited liability company

By: [Signature]

Name: Patrick Fitzpatrick

*Patrick Fitzpatrick*

Title: Senior Counsel, US Tower      *Senior Counsel, US Tower*

Date: 5/13/21

AGREED TO AND ACCEPTED AS OF THE DATE BELOW:

ENTRANT  
Town of Westport, a Connecticut municipal corporation

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

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

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

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



**AMERICAN TOWER**<sup>™</sup>  
CORPORATION

**Exhibit A**  
Equipment description

### Exhibit A

<b>Customer Name:</b> TOWN OF WESTPORT		<b>ATC Asset Name:</b> WSPT-WESTPORT REBUILD CT		<b>ATC Asset #:</b> 310968		
		<b>Customer Site Name:</b> Bayberry Lane		<b>Customer Site #:</b> N/A		
<b>GROUND SPACE REQUIREMENTS</b>						
<b>Total Lease Area</b>	Sq. Ft: 470.00'	<b>Primary Contiguous Lease Area</b>		L:20.00'	W:22.00'	H:10.00'
		Customer Building		12.00'	10.00'	10.00'
		<b>Outside Primary Lease Area</b>		N/A	N/A	N/A
		Generator AREA		7.50'	4.00'	N/A
<b>BACKUP POWER REQUIREMENTS</b>						
Generator: Stand Alone		Fuel Tank Size(gal): 180.0		Fuel Type: Diesel		Fuel Tank Setback(radius): N/A
<b>UTILITY REQUIREMENTS</b>						
Power Provided By: Utility Company Direct						
Telco/Interconnect: N/A						
<b>TRANSMITTER &amp; RECEIVER SPECIFICATIONS</b>						
Type: N/A	Quantity: N/A	TX Power(watts): N/A		ERP(watts): N/A		
<b>ANTENNA EQUIPMENT SPECIFICATIONS</b>						
<b>Type</b>	OMNI	DIPOLE	TTA	DISH-HP	OMNI	OMNI
<b>Manufacturer</b>	dbSpectra	Generic	TX RX Systems	RFS	Generic	Generic
<b>Model #</b>	DS7C09P36U-D	12' Dipole	432F-83W-01-C-110/110R/48/48R	SC3-W100AB	6' Omni	12' Omni
<b>Dimensions HxWxD</b>	170.4" x 2.5" x 2.5"	144" x 3" x 3"	15" x 12" x 7.5"	3.29' x 3.29' x 1.25'	72" x 3" x 3"	144" x 3" x 3"
<b>Weight(lbs.)</b>	70.0	40.0	18.0	40.0	25.0	40.0
<b>Location</b>	Tower	Tower	Tower	Tower	Tower	Tower
<b>RAD Center AGL</b>	147.1'	141.0'	140.0'	140.0'	138.0'	138.0'
<b>Antenna Tip Height</b>	154.2	147.0'	140.6'	141.6'	141.0'	144.0'
<b>Antenna Base Height</b>	140.0'	135.0'	139.4'	138.4'	135.0'	132.0'
<b>Mount Type</b>	Platform with Handrails	Platform with Handrails	Platform with Handrails	Platform with Handrails	Platform with Handrails	Platform with Handrails
<b>Quantity</b>	3	1	1	1	1	1
<b>Azimuths/Dir. of Radiation</b>	0/180/360	0	0	270.68	0	0
<b>Quant. Per Azimuth/Sector</b>	1/1/1	1	1	1	1	1
<b>TX/RX Frequency Units</b>	MHz	N/A	N/A	MHz	MHz	MHz
<b>TX Frequency</b>	764-869	N/A	N/A	11200.00	1	1
<b>RX Frequency</b>	764-869	N/A	N/A	11200.00	1	1
<b>Using Unlicensed Frequencies?</b>	No	No	No	No	No	No
<b>Antenna Gain</b>	9	N/A	N/A	35.5/ 36.2/ 37	.01	20
<b>Total # of Lines</b>	3	0	1	1	0	0
<b>Line Quant. Per Azimuth/Sector</b>	1/1/1	N/A	1	1	N/A	N/A
<b>Line Type</b>	Coax	N/A	Coax	Elliptical	N/A	N/A
<b>Line Diameter Size</b>	1 5/8" Coax	N/A	1/2" Coax	EW50	N/A	N/A
<b>Line Configuration</b>	N/A	N/A	N/A	N/A	N/A	N/A

**ANTENNA EQUIPMENT SPECIFICATIONS**

Type	FM	N/A	N/A	N/A	N/A	N/A
Manufacturer	Generic	N/A	N/A	N/A	N/A	N/A
Model #	6' FM antenna	N/A	N/A	N/A	N/A	N/A
Dimensions HxWxD	72" x null" x null"	N/A	N/A	N/A	N/A	N/A
Weight(lbs.)	30.0	N/A	N/A	N/A	N/A	N/A
Location	Tower	N/A	N/A	N/A	N/A	N/A
RAD Center AGL	138.0	N/A	N/A	N/A	N/A	N/A
Antenna Tip Height	141.0	N/A	N/A	N/A	N/A	N/A
Antenna Base Height	135.0	N/A	N/A	N/A	N/A	N/A
Mount Type	Platform with Handrails	N/A	N/A	N/A	N/A	N/A
Quantity	1	N/A	N/A	N/A	N/A	N/A
Azimuths/Dir. of Radiation	0	N/A	N/A	N/A	N/A	N/A
Quant. Per Azimuth/Sector	1	N/A	N/A	N/A	N/A	N/A
TX/RX Frequency Units	N/A	N/A	N/A	N/A	N/A	N/A
TX Frequency	N/A	N/A	N/A	N/A	N/A	N/A
RX Frequency	N/A	N/A	N/A	N/A	N/A	N/A
Using Unlicensed Frequencies?	No	N/A	N/A	N/A	N/A	N/A
Antenna Gain	3.56	N/A	N/A	N/A	N/A	N/A
Total # of Lines	0	N/A	N/A	N/A	N/A	N/A
Line Quant. Per Azimuth/Sector	N/A	N/A	N/A	N/A	N/A	N/A
Line Type	N/A	N/A	N/A	N/A	N/A	N/A
Line Diameter Size	N/A	N/A	N/A	N/A	N/A	N/A
Line Configuration	N/A	N/A	N/A	N/A	N/A	N/A

OAA765653



**AMERICAN TOWER™**  
CORPORATION

**Exhibit B**  
Site sketch



ITEM #4

4. To take such action as the meeting may determine to approve the Contract Extension Agreement between the Town of Westport and Bench Strength Partners, Inc. as it relates to the Town-owned cell tower at 515 Post Road East, extending the term of the existing Exclusive Representation Agreement for a period of five years.

## CONTRACT EXTENSION AGREEMENT

This Contract Extension Agreement is dated as of May \_\_\_, 2021 by and between the **TOWN OF WESTPORT** (the "Town") and **BENCH STRENGTH PARTNERS, INC.** ("BSP").

### RECITALS

- A. The Town and BSP entered into an Exclusive Representation Agreement For Lease Of, or License To Use Municipal Property dated January 27, 2016 (the "Exclusive Representation Agreement") with respect to the Town-owned cell tower located at 515 Post Road East, Westport, Connecticut.
- B. The term of the Exclusive Representation Agreement expired on January 27, 2021.
- C. The Town and BSP desire to extend the term of the Exclusive Representation Agreement.

NOW THEREFORE, the Town and BSP agree as follows.

1. The term of the Exclusive Representation Agreement is renewed for a period of five (5) years beginning on January 27, 2021 and ending on January 27, 2026.
2. The terms and conditions of the Exclusive Representation Agreement are otherwise unchanged.
3. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes.

*{This space intentionally left blank. The next page is the signature page.}*

IN WITNESS WHEREOF, the Town and BSP have caused this Contract Extension Agreement to be executed as of the date indicated in the first line on Page 1.

**BENCH STRENGTH PARTNERS, INC.**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**TOWN OF WESTPORT**

Signature \_\_\_\_\_

Name James S. Marpe

Title First Selectman

*{Signature page to Contract Extension Agreement}*

**BENCH STRENGTH PARTNERS, INC.**  
**EXCLUSIVE REPRESENTATION AGREEMENT**  
**FOR LEASE OF, OR LICENSE TO USE MUNICIPAL PROPERTY**

THIS EXCLUSIVE REPRESENTATION AGREEMENT ("Agreement"), dated as of the 27<sup>th</sup> day of January, 2016 (the "Effective Date") between Bench Strength Partners, Inc. a corporation located at 26 First Street, Pelham, NY 10803 ("BSP") and the TOWN OF WESTPORT, with an address of 110 Myrtle Avenue, Westport, CT 06880 ("CLIENT").

The CLIENT hereby designates BSP as its sole representative and grants BSP the exclusive right to negotiate leases, licenses, lease buyouts or other agreements for the rental of space on that certain CLIENT property identified in Exhibit A for the placement of cellular antennas and related equipment based on the terms and conditions contained herein.

1. **TERM:** The term of this Agreement commences on the date of execution and will end on the 5<sup>th</sup> anniversary of such date. This Agreement may not be terminated, unless a party breaches the agreement, until the second anniversary of the Effective Date. This Agreement may be terminated by CLIENT at any time after such second anniversary. In the event of such a termination, BSP shall be entitled to a fee, computed and payable in accordance with this Agreement, if the CLIENT concludes a new agreement or modification to an existing agreement for the placement of cellular antennas and related equipment within two (2) years from the date of such termination., provided that BSP has, during the first two years of this agreement, earned a fee as set forth in paragraph 5.
2. **SCOPE of AGREEMENT:** CLIENT appoints BSP as its sole and exclusive representative for the negotiation of leases, licenses, lease buyouts or other agreements for the rental of space on CLIENT property for the placement of cellular antennas and related equipment for the location(s) listed on Exhibit A. This agreement covers: (a) renewals on existing leases for cell carriers, (b) new leases for carriers that seek new or additional space on CLIENT property, and (c) renegotiation of existing leases should that occur outside the context of a lease renewal. BSP shall not be responsible for drafting the lease document. Instead, BSP will work with CLIENT counsel and suggest model lease terms for CLIENT's counsel to incorporate into the final lease document, or other form of agreement.
3. **BSP SERVICES:** BSP will provide its best efforts to negotiate leases acceptable to CLIENT. BSP will present to the CLIENT all offers and proposals made by current and prospective tenants together with BSP's recommendation. All lease proposals negotiated by BSP are subject to the CLIENT approval. CLIENT is not bound to accept leases negotiated by BSP. If BSP reasonably determines that it is necessary, in its sole and absolute discretion, to retain other experts as part of the negotiation process, BSP will engage such experts at its own cost.
4. **CLIENT REFERRALS:** CLIENT shall refer to BSP all inquiries and offers received by CLIENT regarding the lease including any offer to buy out the revenue stream from the lease or offer to lease any CLIENT property for the placement of cellular antennas and related equipment provided that the location of such offer is listed on Exhibit A. All negotiations or leases on locations listed on Exhibit A will be conducted solely by BSP or under BSP's direction, subject to CLIENT's review and final approval.
5. **BSP FEES:** CLIENT agrees to compensate BSP, and BSP agrees to accept compensation for its services, based on the Fee Schedule included as part of this agreement as Exhibit B. CLIENT and BSP agree that the Fee Schedule is a success fee structure, and that no fee will be earned by BSP unless specific economic results are achieved, all as more particularly defined on Exhibit B.
6. **PROPERTY INFORMATION:** CLIENT acknowledges that BSP is not responsible to determine whether

toxic or hazardous wastes, substances, or levels of radio frequency emissions or undesirable materials or conditions currently exist or that could potentially exist in the future at the locations listed on Exhibit A. CLIENT acknowledges that it is solely CLIENT's responsibility to conduct investigations to determine the presence of such materials or conditions.

7. **INSURANCE:**

a. **Insurance Requirements.** BSP shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below:

- i. Comprehensive General Liability with limits no less than \$1,000,000 per occurrence, and \$2,000,000 general aggregate limit, including but not limited to, bodily injury and property damage.
- ii. Business Automobile Liability with limits no less than \$1,000,000 each occurrence including non-owned and hired automobile liability.
- iii. Workers' Compensation Coverage in statutory amounts including Employees Liability Insurance in limits of \$1,000,000 per employee.
- iv. Professional Liability Coverage in the amount of \$1,000,000 each claim and a \$1,000,000 aggregate limit.

b. **Requirements for All Insurance.** All insurance required in this paragraph shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Connecticut and with companies or underwriters satisfactory to the CLIENT.

c. **Additional Insureds.** The CLIENT shall be named as additional insured on each of the BSP's policies above except the Workers' Compensation policy, as and if required by written contract.

d. **Insurance Primary.** All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by CLIENT, as and if required by written contract.

e. **Insurance Certificate.** Certificates showing that BSP is carrying the above-described insurance in the specified amounts shall be furnished to CLIENT prior to the execution of this Agreement, and a certificate showing continued maintenance of such insurance shall be filed with CLIENT during the term of this Agreement. Failure of BSP to provide the required certificates of insurance does not invalidate or eliminate any of the insurance requirements contained herein or relieve BSP from any responsibility to carry the required types and amounts of insurance.

f. **Notices of Change or Cancellation** are provided per the terms and conditions of the insurance policies in effect at the time of the change or cancellation

g. **Disclaimer.** CLIENT does not represent or guarantee that these types or limits of coverage are adequate to protect the BSP's interests and liabilities. It shall be the obligation and responsibility of BSP to insure, as it deems prudent, its own personal property, against damage. The CLIENT does not have insurance coverage for BSP's property and CLIENT expressly disclaim any and all liability for any and all losses, damage and/or claims to personal possessions of BSP.

8. **INDEMNITY.** BSP shall defend, indemnify and hold CLIENT and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the BSP's a) breach of this agreement or b) its negligence or misconduct or that of its experts, agents or contractors in performing the Services hereunder or c) any claims arising in connection with BSP's employees, agents, experts or contractors, or d) the use of any materials supplied by BSP to the CLIENT unless such material was modified by CLIENT and such modification is the cause of such claim. This Paragraph shall survive the

termination of this Agreement for any reason. CLIENT has the discretion and absolute right to choose to enter or not to enter into any new or modified lease agreements. BSP does not guaranty any future lease revenue amounts, as that is specifically conditioned on the terms of any lease agreements accepted by CLIENT. Accordingly, this indemnification shall not be construed to include any loss from the decline of lease revenue that may occur in the future.

**9. DATA, RECORDS AND INSPECTION.**

- a. The CLIENT agrees that it will use reasonable efforts to make available all pertinent information, data and records under its control for BSP to use in the performance of this Agreement, or to assist BSP wherever possible to obtain such records, data and information.
- b. Records shall be maintained by BSP in accordance with requirements prescribed by the CLIENT and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- c. To the extent applicable to the compensation provisions of this Agreement, BSP will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- d. BSP shall be responsible for furnishing to the CLIENT records, data and information as the CLIENT may require pertaining to matters covered by this Agreement.
- e. BSP shall ensure that at any time during normal business hours and as often as the CLIENT may deem necessary, there shall be made available to the CLIENT for examination, all of its records with respect to all matters covered by this Agreement BSP will also permit the CLIENT to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement to the extent applicable to the compensation provisions of this Agreement.
- f. All records provided to BSP shall remain property of the CLIENT and shall be returned to the CLIENT upon the termination of this agreement or upon request.

**10. BSP REPRESENTATION AND WARRANTIES.**

BSP represents and warrants that:

- a. BSP and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. BSP and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the CLIENT and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. BSP has complied or will comply with all legal requirements applicable to it with respect to this Agreement. BSP will observe all applicable laws, regulations, ordinances and orders of the United States, State of Connecticut and agencies and political subdivisions thereof.
- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement

to which the BSP is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the BSP contrary to the terms of any instrument or agreement.

- e. There is no litigation pending or to the best of the BSP's knowledge threatened against BSP affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the BSP to perform its obligations hereunder.
  - f. BSP will not, without the prior written consent of the CLIENT, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.
  - g. BSP employees are Independent Contractors to BSP and are not employees of the Clients for purposes of any tax withholding requirements.
11. **OTHER CLIENTS:** BSP believes that each location is unique and that no conflicts of interest currently exist or will arise in the future. However, it is possible that BSP could be engaged to represent a landlord other than CLIENT in the same geographic area of a CLIENT location that is listed on Exhibit A. If that were to occur, BSP will notify CLIENT of that potential conflict and request the CLIENT to consent to BSP's representation of such other landlord unless:
- a. the location for the other landlord is greater than 2 miles from a CLIENT location listed on Exhibit A; OR
  - b. the location for the other landlord is within 2 miles from a CLIENT location listed on Exhibit A, but the representation agreement between BSP and such other landlord is executed after CLIENT's lease for CLIENT's location has been executed, and provided further that the leases for such other landlord are not scheduled to expire within 12 months of a future lease expiration on CLIENT's location(s) listed on Exhibit A.

BSP and CLIENT agree that situations covered by subparagraphs (a) and (b) within this section 11 are deemed not to present a conflict of interest.

BSP also agrees that it will not accept representation of another landlord within 2 miles of any of the CLIENTS location(s) listed on Exhibit A, without consent of CLIENT, until any negotiation of CLIENTS contracts which are then ongoing for renewal or modification has been concluded as evidenced by a new agreement or modification of an existing agreement.

- 12. **AUTHORITY:** CLIENT represents to BSP that it has the authority to enter and sign this Agreement. The individuals signing this Agreement represent that they are authorized signatories of CLIENT.
- 13. **PROFESSIONAL ADVICE:** BSP recommends that CLIENT obtain legal, tax, or other professional advice relating to this Agreement and the leases that may result from services rendered pursuant to this Agreement.
- 14. **CONFIDENTIAL & PROPRIETARY INFORMATION:** BSP represents that it has developed a unique process regarding the valuation and negotiation of leases for space on municipal assets for the placement of cellular antennas and related equipment. The factors used by BSP and the process used to determine such value and to negotiate leases has been developed through the investment of significant resources for research and development, database development, and geocoding mapping, along with the investment of significant time to accumulate market, industry, and technological information that is critical to BSP's unique process. Disclosure of this information by CLIENT would cause substantial injury to the competitive position of BSP. CLIENT acknowledges and agrees that this information in the hands of CLIENT would be considered

to be derived from a commercial enterprise (i.e., BSP) and which, if disclosed, would cause substantial injury to the competitive position of BSP. Accordingly, to the extent not prohibited by law, CLIENT shall not disclose information regarding BSP's proprietary approach, unique process, factors considered, method of BSP Fee calculation, or any other information labeled as "CONFIDENTIAL" by BSP and arising out of the performance of this Agreement, including voluntary disclosure, or involuntary disclosure pursuant to a Freedom of Information Law ("FOIL") request except as required under Connecticut State Law. Both BSP and CLIENT agree that any final executed lease resulting from the services of BSP shall not be considered confidential nor is the amount of any fee paid to BSP considered confidential under the provisions of this paragraph. This section shall not apply to discussions at public hearings before boards and commissions of the Town of Westport.

15. **SURVIVAL:** This Agreement is binding upon the parties hereto and their respective successors and assigns.
16. **MISCELLANEOUS:** Unless the context clearly indicates the contrary, words in this Agreement used in this singular number shall include the plural number and words in this Agreement used in the plural number shall indicate the singular number. This Agreement shall be governed by the laws of the State of Connecticut, without giving effect to Connecticut's principles of conflicts of law.
17. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between CLIENT and BSP and supersedes all prior discussions. No modification of this Agreement will be effective unless made in writing and signed by both CLIENT and BSP. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective parties thereto.
18. **NOTICES:** Notices to CLIENT and BSP shall be delivered to the addresses noted below.

BSP:                   Bench Strength Partners, Inc.  
                          26 First Street  
                          P. O. Box 8581 Pelham, NY 10803  
                          Attn: Mr. Francis Clerkin

CLIENT:            Town of Westport  
                          Attn: First Selectman  
                          110 Myrtle Avenue  
                          Westport, CT 06880

Executed, this     27<sup>th</sup> day of January, 2016

BENCH STRENGTH PARTNERS, INC.     TOWN OF WESTPORT

BY: Francis P. Clerkin     BY: James S. Marpe  
Name: Francis P. Clerkin     Name: James S. Marpe  
Title: Partner                    Title: First Selectman

**BENCH STRENGTH PARTNERS, INC.  
EXCLUSIVE REPRESENTATION AGREEMENT  
FOR LEASE OF OR LICENSE TO USE  
MUNICIPAL PROPERTY  
EXHIBIT A – SCHEDULE OF LOCATIONS**

This Exhibit A to the Agreement dated January 27, 2016 (“Agreement”) between the TOWN OF WESTPORT (“CLIENT”) and Bench Strength Partners, Inc. (“BSP”) describes the location(s) for which CLIENT has designated BSP to act as CLIENT’S Exclusive Representative.

**LOCATIONS:**

515 Post Road East, Westport, Connecticut (Westport Fire Department Headquarters)

Executed this 27 day of January, 2016.

BENCH STRENGTH PARTNERS, INC.

BY Francis P. Clerkin

Name: Francis P. Clerkin

Title: Partner

TOWN OF WESTPORT

By James S. Marpe

Name: James S. Marpe

Title: First Selectman

**BENCH STRENGTH PARTNERS, INC.  
EXCLUSIVE REPRESENTATION AGREEMENT  
FOR LEASE OF OR LICENSE TO USE MUNICIPAL PROPERTY**

**EXHIBIT B – FEE SCHEDULE**

This Exhibit B to the agreement dated January 29, 2016 between TOWN OF WESTPORT (“CLIENT”) and Bench Strength Partners, Inc. (“BSP”) describes the conditions upon which a fee will be earned by BSP and the terms concerning the timing of payment of such fee.

- FEE SCHEDULE:** BSP shall earn a fee for providing the services described in the Agreement, but only if such services result in an executed lease or lease amendment between CLIENT and a Tenant. Fees are earned only on the Increased Rent to be paid to CLIENT by Tenant: (a) over the Term of the new lease or (b) the term of the lease amendment or (c) the remaining term of an existing lease, the financial terms of which have been modified, or (d) on the value or increased value of termination provisions, as the case may be. The Term of the new lease or the lease amendment is the initial fixed term as defined in the lease or amendment. Renewal options or extensions of the new lease are discussed in paragraph 2 below. Notwithstanding anything herein to the contrary, BSP shall not earn a fee on any sum paid by a Tenant after the later of: fifteen (15) years after the effective date of the Tenant’s new lease; or March 31, 2034. The “Increased Rent” is defined as the total rent or license fee scheduled to be paid over the Term of the new lease or license agreement plus any additional monetary enhancements discussed in Paragraph 6, below, minus the Baseline Rent.

The Fee Percentages applied to the Increased Rent shall be those on the schedule below. The Fee Percentages within each range of increased rent shall be applicable only to the Increased Rent within that range of percentage increases.

“Baseline Rent” for Sprint, AT&T, T-Mobile, Verizon and their respective affiliates means the dollar amount specified in the table on the next page for each Tenant for the first year of the negotiated lease term increased by three percent (3.0%) per year, compounded annually, for each subsequent year of the negotiated lease term.

Increased Rent From Up To	BSP Fee Percentage
0%      20%	0%
20.01%    30%	15%
30.01%    40%	20%
40.01%    50%	25%
50.01% or above	30%

For example, if a new lease was executed and the Increased Rent was 20%, no fee would be earned. If the Increased Rent were 35%, the fee earned by BSP would be the sum of (i) the BSP Fee Percentage (20%) applied to the Increased Rent between 30% and 40%, plus (ii) the BSP Fee Percentage (15%) applied to the Increased Rent between 20% and 30%.

2. **RENEWAL OPTIONS:** If the new lease contains options to renew for additional terms, BSP shall earn a fee for such renewal terms and such fee will be computed in accordance with Paragraph 1, as if the renewal term was a part of the original fixed term. However, such fee shall only be earned upon exercise of such renewal, and will be payable to BSP according to the payment provisions in Paragraph 7, below. CLIENT agrees to notify BSP of any decision by a Tenant to exercise a renewal option.
  
3. **REPLACEMENT TENANTS:** In the event that BSP negotiates a lease with a new Tenant and such Tenant replaces the space leased by an existing Tenant that elects not to renew their lease, BSP shall earn a fee on the lease with the Replacement Tenant on the same terms as described in Paragraph 1, and in such event the Baseline Rent shall be based on the rent of the Tenant that is being replaced by the new Tenant.
  
4. **ADDITIONAL TENANTS:** (a) In the event that BSP negotiates a lease with a party other than Sprint, AT&T, Verizon, T-Mobile or their respective affiliates, and such Tenant is in addition to and not in replacement of an existing Tenant, BSP shall earn a fee for negotiating such lease based on the same terms as described Paragraph 1, and in such event the Baseline Rent shall be the dollar amount specified in the table below for the first year of the negotiated lease term increased by three percent (3.0%) per year, compounded annually, for each subsequent year of the negotiated lease term.

First Year of Negotiated Lease Term	Baseline Rent Per Tenant
2016	\$33,500.00
2017	\$34,505.00
2018	\$35,540.15
2019	\$36,606.35
2020	\$37,704.54
2021	\$38,835.68
2022	\$40,000.75
2023	\$41,200.77
2024	\$42,436.79
2025	\$43,709.89
2026	\$45,021.19
2027	\$46,371.83
2028	\$47,762.98
2029	\$49,195.87
2030	\$50,671.75
2031	\$52,191.90
2032	\$53,757.66
2033	\$55,370.39
2034	\$57,031.50

5. **CANCELLATION CLAUSES:** In the event that CLIENT has the right to cancel a lease at a time subsequent to the execution of the lease, BSP shall be paid a fee for the entire lease term (excluding renewal options) as though such right to cancel did not exist.
  
6. **ENHANCED REVENUE:** In calculating the fees pursuant to Paragraph 1, the increased rent shall include all incremental revenue to which CLIENT is entitled that either stems from lease provisions that were not present in the existing lease, or relate to increased revenue terms for lease provisions that were present in the existing lease. In the case that BSP's review of the lease terms and the payment history under such lease terms determines that there are unpaid or underpaid rents or fees due to the CLIENT, which have not been paid in the previous 3 months BSP shall be entitled to 25% of all such unpaid or underpaid rents which BSP collects on behalf of the CLIENT. The payment for such collections will not be considered as increased rents, as defined in section 1 of this agreement and the 25% fee will be paid within 30 days of the receipt of the past due payments to the CLIENT
  
7. **TIME OF PAYMENT:** Fees earned by BSP pursuant to this Agreement shall be earned upon execution of the lease or lease amendment, or upon exercise of any renewal options. In the case of a new lease, lease amendment or lease renewal, CLIENT shall pay BSP its fee by allocating seventy five percent (75%) of the enhanced revenues scheduled to be received by CLIENT under the lease until the fee computed pursuant to Paragraph 1 has been fully paid. The first such payment shall be made within 30 days of the receipt of the amounts paid pursuant to the terms of the new lease or lease amendment. Additional payments shall be made on each anniversary of the date of the date of Lease Execution until the total fee earned by BSP has been paid. In the case of a renewal option, such fee shall be paid in the same manner as a new lease or lease renewal described above.
  
8. **ACCELERATION:** In the event that CLIENT enters into a transaction to assign the lease or the cash flows stemming from this lease to a third party, any remaining fee then due to BSP shall be accelerated and paid in full as of the effective date of any such assignment. If such payments include renewal periods, which have not yet been exercised, but which are included in the transaction for the sale of such rights, then the BSP fee due for such renewal will also be due as of the effective date of any such assignment. Such renewal fee payment due BSP will be subject to the same discount rate utilized in arriving at the discounted rents.

Executed, this 27 day of January, 2016.

BENCH STRENGTH PARTNERS, INC.

By:   
 Name: Francis A. Clark  
 Title: Partner

TOWN OF WESTPORT

By:   
 Name: James S. Marpe  
 Title: First Selectman

ITEM #5

5. To take such action as the meeting may determine, to approve the Master Services Agreement between the Town of Westport and LCT Software LLC, for a subscription to the DigEplan cloud-based service for electronic plan review to facilitate online land use permitting through the Accela platform.

Between

**LCT Software LLC (DigEplan)**

and

**The Town of Westport, CT**

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**Master Services Agreement**

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**[www.digeplan.com](http://www.digeplan.com)**

## Parties

1. This Master Service Agreement (this “**Agreement**”) is entered into as of the date of last signature (the “**Effective Date**”) by and between LCT Software LLC a Florida corporation principally located at 4500, 140th Avenue North Suite, 101 Clearwater, FL 33762 (“LCT Software”), and The Town of Westport, CT located at 110 Myrtle Ave, Westport, CT 06880 (the **Customer**.)

## Background

- a) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet for the purpose of subscribers
- b) The customer wishes to use the Supplier's service in its business operations.
- c) The Supplier has agreed to provide, and the customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.
- e)d) The Customer will receive professional services from an implementation partner (Vision33) in order to implement the software application and platform.

## Agreed terms

- 1.1. **Definitions** - Unless otherwise defined in this Agreement, terms used herein have the same meanings as set out in the Exhibits to this Agreement (including any supplements or attachments thereto).
- 1.2. “**Optional Services**” refers to certain optional add-ons to the Subscription Service as may be offered by LCT Software from time to time.
- 1.3. “**Professional Services**” refers to ~~LCT Software’s delivery~~the implementation partner’s, training, ~~configuration performance optimization~~ and related services as set out in the Professional Services Terms. ~~The Professional Services described in this Agreement are applicable to Customer if and as ordered.~~
- 1.4. “**Professional Services Terms**” refers to those additional Professional Services Terms and Conditions attached hereto at Exhibit D – Statement of Work (SoW) between the implementation partner and The Customer.
- 1.5. “**Services**” refers to the Subscription Service together with ~~any Professional Services and/or any~~ -Optional Services, as applicable.
- 1.6. “**Subscription Service**” refers to DigEplan’s cloud-based service designed to provide government entities with Integrated Electronic Plan Review.
- 1.7. “**Subscription T’s & C’s**” refers to the Subscription Terms and Conditions attached hereto at Exhibit C

Customer agrees that its purchase of the Services hereunder is neither contingent on the delivery of nor any oral or written comments about any future functionality or features of the Subscription Service.

## 2. Procurement of Services

Customer may purchase the Services by submitting orders in a form designated or approved by LCT Software (each, an “**Order**”) ~~or, in the case of certain Professional Services, by executing Statements~~

of Work designated or approved by LCT Software (each an "SOW"). Upon Order (or SOW) acceptance and subject to Customer's payment of the corresponding Services Fees, LCT Software will make the Services available to Customer.

**2.1. Governing Terms.** The Subscription Service will be subject to this Agreement and the Subscription T's & C's for the Subscription Period and number of End Users as specified in each Order. ~~Professional Services will be subject to this Agreement and the Professional Services Terms for the designated performance period as specific in the applicable Order or SOW.~~ Any Optional Services will be subject to the Subscription Terms or such other documentation as designated by LCT Software.

**2.2. Order Acceptance.** No Order for Services will be deemed accepted by LCT Software unless and until LCT Software accepts such Order (or SOW) in writing. Any terms and conditions contained in any quote, invoice, purchase order or Order that are inconsistent with the terms and conditions of this Agreement will be deemed stricken, unless expressly agreed to in writing by LCT Software with explicit reference to the accepted terms and conditions. All Orders ~~and SOWs~~ will reference this Agreement. Upon acceptance of an Order as provided above, it will become part of this Agreement.

**2.3. Adding End Users.** If Customer desires to increase the number of End Users that are permitted to use the Subscription Service, a new Order must be issued for the additional End Users. LCT Software may, in its discretion, allow or require the initial Subscription Period of newly-purchased subscriptions to be adjusted to expire or renew simultaneously with Customer's pre-existing subscription(s).

**2.4. Optional Services.** Purchase of Optional Services from LCT Software will be subject to any price quote LCT Software provides to Customer and the Order procedure described above. As designated by LCT Software at the time of Customer's purchase, use of the Optional Services may be subject to ~~Exhibit D~~ or additional terms and conditions beyond or in lieu of those in Exhibit C.

### **3. Fees and Payment for Services**

**3.1. Fees.** Customer will pay all fees for the Services per the prices quoted to Customer by LCT Software and finalized via an Order ~~or SOW~~. Unless expressly set out in an Order ~~or SOW~~, price increases will not apply to any Order ~~or SOW~~ that has already been accepted by LCT Software. Except as otherwise agreed by the parties in writing, Services Fees are quoted and payable in United States dollars, and Customer's payment obligations are non-cancelable, and Fees paid are non-refundable.

**3.2. Invoicing and Payment.** LCT Software will invoice Customer in advance for the Services unless otherwise expressly agreed by the parties.

**3.3. Subscription Service fees** are due upon invoice and payable within thirty (45) days of the invoice date. Subscription Service fees will be due no later than the first day of each Subscription Period to which the payment relates. If Customer orders additional End User quantities part-way through an existing Subscription Period, and the initial Subscription Period for the additional quantity is adjusted as described in Section 2.3, then the Subscription fee for such additional quantity will be pro-rated accordingly. Optional Services will be due at the same time as payment for the corresponding Subscription Service, or (if applicable) as otherwise specified in the applicable Order or governing terms. Subscription Service fees will be subject to an automatic annual increase by the percentage of the prior year's Subscription Service fees (the "Uplift") listed in the Order.

~~3.4. Professional Services fees and expenses are due upon invoice and payable within thirty (30) days of the invoice date. Professional Services fees and expenses may be subject to additional payment terms if and as designated in the applicable Order or SOW. Generally, Professional Services~~

~~expenses will be billed as accrued and invoiced to Customer monthly in accordance with LCT Software's expenses travel policy.~~[DP1]

**3.5. Billing Info & Overdue Charges.** Customer is responsible for keeping LCT Software accurately and fully informed of Customer's billing and contact information, including providing any purchase order numbers in advance of invoice issuance. If any Fees are not received from Customer by the due date, they will accrue interest at the rate of one and a half percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

**3.6. Overdue Payments.** If any amount owing by Customer under this Agreement for any of the Services is thirty (30) or more days overdue, LCT Software may, without limiting LCT Software's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement (including any Order or SOW) so that all such obligations become immediately due and payable, suspend the Subscription Service and/or stop performance of the Professional Services until such amounts are paid in full.

**3.7. Taxes.** LCT Software's Services fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If LCT Software has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides LCT Software with a valid tax exemption certificate authorized by the appropriate taxing authority prior to invoice issuance. For clarity, LCT Software is solely responsible for taxes assessable against it based on LCT Software income, property and employees.

## **4. Term and Termination**

**4.1. Term of Agreement.** Unless terminated earlier in accordance with Section 4.2, this Agreement commences on the Effective Date and will continue with respect to the Services as enumerated below:

**4.1.1. Subscription Service.** The Subscription T's & C's at **Exhibit C** will commence on the date listed in the first Order and continue for a period of one (1) year (the "Initial Subscription Period"). Thereafter, the Subscription Term will automatically renew for additional one-year periods (each a "Renewal Subscription Period") unless and until either party gives written notice of non-renewal at least sixty (30) days in advance. Customer must send written notice of non-renewal to **Accounts@lctsoftware.com** Should Customer not provide written notice of non-renewal at least sixty (30) days in advance, then Customer is obligated to pay for the subsequent renewal in full.

~~4.1.2. Professional Services. If and as applicable to Customer, the Professional Services Terms at Exhibit D will commence on the date listed in the first Order or SOW and continue for the period designated in such Order or SOW. The effectiveness of the Professional Services Terms will be automatically extended to the last date specified in all SOWs and Professional Services Orders issued by LCT Software. Upon Customer request, LCT Software may, in its sole discretion, reinstate expired Professional Services Terms after a lapse in effectiveness under previously issued SOWs or Professional Services Orders.~~[DP2]

**4.2. Termination.** Either party may terminate this Agreement upon written notice if the other party materially breaches this Agreement and fails to correct the breach within thirty (30) days following written notice specifying the breach. The Services will be subject to additional termination provisions

if and as designated in the respective Exhibits to this Agreement.

**4.3. Effect of Termination.** Termination or expiration of this Agreement will not terminate any then-current Customer Subscriptions to the Subscription Service (which will continue to be governed by the terms of **Exhibit C**, including the termination provisions set forth therein); provided, however, that in the case of termination of this Agreement by LCT Software for Customer's uncured breach of this Agreement, LCT Software may simultaneously terminate any such Subscriptions. Subject to the Professional Services Terms, termination of this Agreement will terminate all on-going and planned Professional Services.

## **5. Additional customer terms.**

Any terms and conditions required by Customer under applicable statute, judicial order or agency policy will be as stated in this Section 5 (the "Additional Customer Terms"). Alternatively, the Parties may set forth Additional Customer Terms at Exhibit C to this Agreement as warranted under the circumstances. Notwithstanding anything to the contrary in Section 6, the Additional Customer Terms will govern over the body of this Agreement in the event of a direct conflict of terms. In the absence of any inclusion of Additional Customer Terms in this Section 5 or at Exhibit C, the parties agree that no additional contractual obligations are intended in respect of the Services provided hereunder.

## **6. General**

6.1 The parties acknowledge that the terms of each of the Exhibits to this Agreement (inclusive of any supplements or attachments thereto), including, but not limited to, the disclaimers, limitations of liability, and other general provisions thereof, are incorporated into and form a part of this Agreement.

6.2 In the event of a direct conflict between the body of this Agreement and the terms of the Exhibits hereto, the terms in the body of this Agreement will govern. Each party specifies its address set forth above for receipt of notices under this Agreement. This Agreement may be signed in one or more identical counterparts, each of which will be an original, but all of which together will constitute one instrument.

## Subscription Fees and Term

### 1. Subscription Fees

The initial yearly Subscription Fees shall amount to a total of \$20,160 USD. This is based on 20 User Subscriptions.

### 2. Additional User Subscription Fees

Additional User Subscriptions may be purchased by the Agency in accordance with clause 2.3 at \$1,068.00 USD per User Subscription per year for users 1 to 10, \$9,480.00 per User Subscription per year for users 11 to 20.

### 3. Initial Subscription Term: 1 year, from TERM START DATE to TERM END DATE. Each additional yearly subscription renewal will be subject to a 3% uplift.

#### Exhibits List:

Exhibit A - Standard Support Policy

Exhibit B – Service Level Commitment

Exhibit C – Subscription Terms and Conditions

Signed on behalf of AGENCY  
NAME

Signed .....

Print Name .....

Position .....

Date .....

Signed by on behalf of LCT  
SOFTWARE LLC

Signed .....

Print Name .....

Position .....

Date .....

## Exhibit – A

### Standard Support Policy

This LCT Software LLC's SaaS Support Policy ("Support Policy") is a policy governing the use of DigEplan's software-as-a-service products (the "Service(s)") under the terms of the services agreement (the "Agreement") between LCT Software, LLC and its affiliates ("LCT Software", "us" or "we") and the purchaser of DigEplan's Service ("Customer"). This Support Policy may be updated from time to time by LCT Software at its sole discretion.

#### General Requirements and Hours of Operation

Ticketing Support: LCT Software will provide access to a ticketing system, which will be available twenty-four (24) hours per day, seven (7) days per week. A qualified support specialist shall use commercially reasonable efforts to answer questions and resolve problems regarding the Subscription Service during normal business hours of Monday-Friday, 8:00 A.M. until 5:00 P.M. EST.

Telephone and E-mail Support: DigEplan's Customer Support Department, a live technical support facility, will be available to Customer from 8:00 A.M. until 5:00 P.M. Eastern Standard Time Monday through Friday, excluding LCT Software LLC's observed holidays.

Online Support Material: Available twenty-four (24) hours, seven (7) days a week, LCT Software will make available to Customer certain technical information in DigEplan's online support database.

#### Updates

Updates may address security fixes, critical patches, general maintenance functionality, and documentation and shall be made available at LCT Software's discretion. LCT Software is under no obligation to develop any future functionality or enhancements unless otherwise specified in the Agreement. If an update for the Service is made available to Customer pursuant to this Support Policy, it will automatically replace the previous version of the applicable Service.

Where practical, LCT Software will schedule Updates during non-business hours and will provide Customers with advance notice of all Updates.

#### Upgrade/Downgrade of Severity Level

If, during the Support Request process, the issue either warrants assignment of a higher severity level than currently assigned or no longer warrants the severity level currently assigned based on its current impact on the production operation of the SaaS offering, then the severity level will be upgraded or downgraded accordingly to the severity level that most appropriately reflects its current impact.

#### Third Party Product Support

If any third-party software is not supplied by LCT Software, LCT Software disclaims all support obligations for such third-party software, unless expressly specified by LCT Software in Customer's Agreement.

## Exclusions

The following Support Exclusions are not covered by this Support Policy: (a) Support required due to Customer's or any End User's or third party's misuse of the Services; (b) Support during times outside of LCT Software regular business hours stated above; (c) Support necessitated by external factors outside of LCT Software's reasonable control, including any force majeure event or Internet access or related problems beyond the Service demarcation point; (d) Support of or caused by customizations (if outside of LCT Software's best practice recommendations), configuration changes, scripting, or data loss caused by or on behalf of Customer or any End User; (e) Support of or caused by Customer's or any End User's or third party's equipment, software or other technology (other than third party equipment within LCT Software's direct control); (f) Support to resolve or work-around conditions which cannot be reproduced in LCT Software's support environment and (g) Support of any software add-ons supplied together with the Service (except where specified in the Agreement). Any support services falling within these Support Exclusions may be provided by LCT Software at its discretion and, if so provided, may be subject to additional pricing and support terms as specified by LCT Software

## Support Classifications

Error Classification	Criteria
Critical Severity Issue (Priority 1)	The Service is down or there is a major malfunction (deeming Service non-functional or severely affected), resulting in a business revenue loss and impacting the Service functionality for a majority of users. No reasonable workaround exists.
High Severity Issue (Priority 2)	High loss of Service functionality or performance, impacting the Service functionality for a high number of users (e.g. Service response is very slow, day to day operations continue, but are impacted by the issue). No reasonable workaround available or the workaround is impractical.
Medium Severity Issue (Priority 3)	Moderate loss of Service functionality or performance, impacting multiple users. A convenient workaround exists (e.g. non-critical feature is unavailable or requires additional user intervention).
Low Severity Issue (Priority 4)	Minor loss of Service functionality or feature in question.

**Functional Definitions:** For the purposes of error classification, essential or major functions include: data capture features, SLA and alarming features, performance management features and application performance problem resolution features.

**Response Time:** LCT Software shall use commercially reasonable efforts to respond to error reports in accordance with the table set forth below. LCT Software will use reasonable means to repair the error and keep Customer informed of progress. LCT Software makes no representations as to when a full resolution of the error may be made.

Error Classification	Initial Response and Acknowledgement	Updates	Resolution Goal
Critical	1 Business Hour	Daily	LCT Software will put forth our best effort to provide a workaround, fix, or estimated completion date within seventy-two (72) hours after the problem has been diagnosed and/or replicated.
High	4 Business Hours	Weekly	LCT Software will put forth our best effort to provide a workaround or fix or estimated completion date within four (4) business days after the problem has been diagnosed and/or replicated.
Medium	8 Business Hours	As available	LCT Software will put forth our best effort to provide a workaround or fix or estimated completion date within seven (7) business days after the problem has been diagnosed and/or replicated.
Low	24 Business Hours	None	Resolution for the Issue may be released as a patch set or be incorporated into a future schedule release of the product.

## Exhibit B

### SERVICE LEVEL COMMITMENT

This SaaS Service Level Commitment ("SLC") is a policy governing the use of LCT software-as-service products (individually or collectively, the "Service" or "DigEplan") under the terms of the LCT Software Master Services Agreement (the "Agreement") between LCT Software LLC and its affiliates ("LCT Software", "us" or "we") and the purchaser of LCT Software's Subscription Service ("Customer").

Unless otherwise provided herein, this SLC is subject to the terms of the Agreement and capitalized terms will have the meaning specified in the Agreement. LCT Software reserves the right to change the terms of this SLC in accordance with the Agreement.

#### Definitions

"Monthly Uptime Percentage" is calculated by subtracting from 100% the percentage of minutes during the month in which the Service was Unavailable. Measurement of the Monthly Uptime Percentage excludes downtime resulting directly or indirectly from any SLC Exclusion.

"Service Credit" is a dollar credit, calculated as set forth below, that LCT Software may credit back to an eligible Customer account.

"Unavailable" means, as applicable: (i) Customer is repeatedly unable to log into the Service; (ii) Customer experiences repeated connection request failures; (iii) Customer experiences lack of connectivity of external, public instances or sites lasting for more than ten (10) minutes;

The foregoing events must be verifiable or replicable by LCT Software or its designee. Availability of Accela APIs which are used by DigEplan to connect, is expressly excluded from this SLC.

#### Service Commitment

LCT Software will use commercially reasonable efforts to make the Service available with a Monthly Uptime Percentage of at least 99.9%, in each calendar month of the Subscription Period (the "Commitment"). In the event the Service does not meet this Commitment, Customer will be eligible to receive a Service Credit as described below.

#### Scheduled & Emergency Maintenance

LCT Software will maintain certain scheduled maintenance windows during which regular, planned maintenance of the Service may be performed. LCT Software will use commercially reasonable efforts to provide Customer with no less than twenty-four (24) hours' notice prior to Services unavailability due to planned maintenance. LCT Software's standard maintenance window will generally fall between the hours of 12:00 AM (00:00) and 5:00 AM [05:00] on a day of our choosing, local time.

In exceptional circumstances where updates may take more time than the weekly time slot, it may be necessary to run updates over w-ends.

LCT Software will endeavour to provide as much notice as is practicable under the circumstances for patches, updates, fixes and other emergency maintenance activities which may be applied on an urgent basis.

LCT Software will provide three (3) business days' notice prior to any planned network, server hardware, operating environment, or database modifications of a material nature.

Service Credits Monthly Uptime Percentage	Service Credit Percentage
Less than 99.9% but equal to or greater than 99.0%	2%
Less than 99.0%	5%

LCT Software will apply any Service Credits only against future Service payments otherwise due from Customer. Service Credits will not entitle Customer to any refund or other payment from LCT Software.

Service Credits may not be transferred or applied to any other account.

Unless otherwise provided in the Agreement, Customer’s sole and exclusive remedy for any unavailability, non-performance, or other failure by LCT Software to provide the Service is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLC.

### Service Credit Requests

To receive a Service Credit, Customer must submit a claim in writing to [accounts@lctsoftware.com](mailto:accounts@lctsoftware.com)

To be eligible for a Service Credit, the claim must be received by LCT Software in the calendar quarter in which the incident occurred and must include:

- the words “SLC Credit Request” in the subject line;
- the dates and times of each Unavailability incident that Customer is claiming; and
- the quantity or scope of affected Users (as indicated by User ID, number of departments or similar metric);
- Supporting evidence from the support service desk

If the Monthly Uptime Percentage of such Service Credit request is confirmed by us and is less than the Service Commitment, LCT Software will issue the Service Credit to Customer within one billing cycle following the month in which Customer’s request is confirmed by LCT Software. Customer’s failure to provide the request and other information as required above will disqualify Customer from receiving a Service Credit.

### SLC Exclusions

The Service Commitment does not apply to any unavailability, suspension or termination of the Service or any Service performance issues: (i) caused by factors outside of LCT Software’s reasonable control, including any force majeure event or Internet access or related problems beyond the Service demarcation point; (ii) that result from customizations (if outside of LCT Software’s best practice recommendations), configuration changes by or on behalf of Customer or any End User; (iii) that result from Customer’s or any End User’s or third party’s equipment, software or other technology or integrations (other than third party equipment within LCT Software’s direct control); (iv) that result from any maintenance as provided for pursuant to the above terms; or (vii) arising from our suspension or termination of Customer’s right to use the Service in accordance with the Agreement (collectively, the “SLC Exclusions”). If availability is impacted by factors other than those used in the Monthly Uptime Percentage calculation, LCT Software may issue a Service Credit with consideration to pertinent factors as assessed by LCT Software in its sole discretion.

## EXHIBIT C

### Subscription Terms & Conditions

Purchase or use of the Service (defined below) is subject to these Subscription Terms and Conditions (these "Terms").

#### 1. DEFINITIONS

**"Agreement"** means these Terms and, if applicable, the written master service agreement or other written agreement between Customer and LCT Software LLC that incorporates these Terms by reference.

**"Communication Data"** means any and all information transmitted, shared, or exchanged between Customer and any End User, or between End User and any third party (including any third-party network or website), using the Service, with respect to any transaction or other communication enabled by the Service, but excluding Security Data.

**"Customer"** means the entity that purchases a subscription to the Service, directly from LCT Software or through an authorized reseller, distributor, or other channel partner of LCT Software.

**"End Users"** means individuals who are authorized by Customer to use the Service and for whom Customer has purchased a subscription to the Service. End Users may include but are not limited to Customer's employees, contractors and agents. Each End User will be associated with a single, unique email address for purposes of accessing (and being identified within) the Service.

**"Intellectual Property Rights"** means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

**"Optional Services"** mean the optional add-ons to the Service that may be available for purchase either directly from LCT Software or through an authorized reseller or partner of LCT Software, as more particularly described or identified in the applicable Order.

**"Order"** means written orders to purchase subscriptions to use the Service (or, where applicable, to purchase Optional Services).

**"Security Data"** means any and all information provided by Customer or any End User to establish secure transmissions through use of the Service, including but not limited to personal information, information used to identify account names or numbers, routing information, usernames, passwords, access codes and prompts.

**"Service"** or **"Subscription Service"** means the cloud-based network security service(s) for which Customer has obtained a subscription either directly from LCT Software or through an authorized reseller or other partner of LCT Software, as more particularly described in the applicable agreement or order under which such subscription was obtained. If and as designated in the Specifications, the Service may be inclusive of application programming interfaces (APIs) developed by LCT Software to enable interaction and integration with the Service. Unless otherwise specified herein or other applicable contractual terms, all references to "Service" will be deemed to include any and all Optional Services.

**"Software"** means any software (including client software for End Users' devices) that LCT Software makes available for download or otherwise provides for use with the Service.

**"Subscription Period(s)"** means the duration of Customers and End Users active, paid access to the Service, as designated in the Order(s).

**"Supported Modification"** means a configuration of or modification to the Service requested by Customer that can be consistently supported by LCT Software via APIs, does not require direct database changes and is capable of being tested and maintained by LCT Software.

**2. AUTHORIZED USERS.** Only End Users may access or use the Service under Customer's account. Each End User may use any reasonable number of compatible devices for purposes of accessing the Service; provided that, LCT Software reserves the right to determine whether a number of devices is reasonable and, in its sole discretion, to place a corresponding cap on the number of devices. Unless expressly authorized by LCT Software, End User subscriptions cannot be shared or used by more than one individual but may be permanently reassigned to new End Users. The number of End User subscriptions purchased may be increased (under a new Order) but cannot be decreased during any Subscription Period.

**3. USE OF THE SERVICE**

**3.1. LCT Software's Responsibilities.** LCT Software will: (i) provide to Customer support related to the Service in accordance with the LCT Software Support Terms accessible at <https://zdrive.eu/gVe> (which URL location and content may be updated from time to time by LCT Software) and (ii) provide the Service only in accordance with applicable laws and government regulations.

**3.2. Customer's Responsibilities.** Customer will (i) be responsible for meeting LCT Software's applicable minimum system requirements for use of the Service; (ii) be responsible for End Users' compliance with these Terms and for any other activity (whether or not authorized by Customer) occurring under Customer's account, (iii) be solely responsible for the accuracy, quality, integrity and legality of Communication Data, (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Service under its account, and notify LCT Software promptly of any such unauthorized access or use, and (v) use the Service only in accordance with the applicable documentation, laws and government regulations, and any written instructions provided by LCT Software to Customer.

**3.3. Prohibitions.** Customer will not, and will ensure that its End Users do not, (i) make the Service available to anyone other than End Users; (ii) sell, resell, rent, lease or transfer the Service in whole or in part to any third party (including Customer affiliates) without the express permission of LCT Software and execution of designated transfer documentation; (iii) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual property rights; (iv) use the Service to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Service or third-party data contained therein; (vi) attempt to gain unauthorized access to the Service or any related systems or networks; or (vii) obtain intellectual property rights to the use of any component of the Services (inclusive of APIs).

**3.4. Software.** End Users may need to download and install client Software (as made available by LCT Software or other third party authorized by LCT Software) on each device through which they intend to use the Service. All use of such Software will be governed by terms of the applicable license agreement or terms of use that accompanies or is made available in connection with the Software. Customer acknowledges that each End User (or authorized Customer representative) must accept such license agreement, and have Service-compatible device(s), to download, install, and/or use the Software. Nothing in these Terms will be deemed to grant to Customer rights of any kind in the Software.

**3.5. Security Data and Privacy.** Customer understands that failure to protect Security Data may allow an unauthorized person or entity to access the Service. In addition, Customer acknowledges that LCT Software generally does not have access to and cannot retrieve lost Security Data. If Customer loses Security Data, Customer may no longer have access to the Service. Customer agrees that: (i) Customer (or its End User) is solely responsible for collecting, inputting and updating all Security Data; (ii) LCT Software assumes no responsibility for supervision, management or control of Customer's and End Users' Security Data; and (iii) LCT Software assumes no responsibility for any fraudulent or unauthorized use of the Software or any portion of the Service. To the extent that LCT Software has access to any personally identifiable information gathered from Customer or from End Users in connection with the Service, such information will be governed by the provisions of the LCT's Privacy Policy, a copy of which is available on the LCT Software's website at <https://www.digeplan.com/privacy-policy/> (which URL location and content may be updated from time to time by LCT Software).

#### 4. PROPRIETARY RIGHTS

**4.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, LCT Software reserves all rights, title and interest in and to the Service and any associated Software and documentation, including all

related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**4.2. Restrictions.** In addition to the other prohibitions set forth in these Terms, Customer will not and will ensure that its agents do not (i) create derivative works based on the Service, (ii) copy, frame or mirror any part or content of the Service, other than copying or framing on Customer's own intranets or otherwise for Customer's internal business purposes in accordance with LCT Software's applicable documentation, (iii) reverse engineer the Service, or (iv) access the Service (inclusive of any APIs) in order to build or patent a competitive product or service or to copy any features, functions or graphics of the Service.

**4.3. Communication Data Ownership.** Customer reserves all its rights, title and interest in and to the Communication Data. No rights are granted to LCT Software hereunder with respect to the Communication Data, except that LCT Software may (i) store, copy, process, and transmit such Communication Data for purposes of providing the Service to Customer and (ii) otherwise utilize Communication Data if and as permitted by the LCT Software's Privacy Policy.

**4.4. Customer Suggestions.** Customer grants LCT Software a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Service (or LCT's other software or services) any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or End Users relating to the operation or features of the Service.

**5. CONFIDENTIALITY** 5.1. Definition. As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

5.2. **Protection.** Except as otherwise permitted in writing by the Disclosing Party and subject to the other terms of this Agreement (including LCT Software's Privacy Policy), (i) the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, and

(ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who are legally bound to protect such Confidential Information consistent with these Terms.

5.3. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest, limit, or protect the disclosure.

**6. WARRANTIES AND DISCLAIMERS** 6.1. Specifications. Subject to the limitations set forth below, LCT Software warrants that the Service will operate in all material respects in accordance with the Specifications. As Customer's sole and exclusive remedy and LCT Software's entire liability for any breach of the foregoing warranty, LCT Software will use commercially reasonable efforts to modify the Service so that it conforms to foregoing warranty.

6.2. **Service Level Commitment.** During the Subscription Period, LCT Software further warrants that the Service will meet the performance level specified in the Service Level Commitment, as made available by LCT Software at <https://zdrive.eu/gVe> (which URL location and content may be updated from time to time by LCT Software). The Service Level Commitment sets forth Customer's sole and exclusive remedy for LCT Software's failure to achieve the stated Service performance level.

**6.3. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, LCT SOFTWARE DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND LCT SOFTWARE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING OUT OF THE COURSE OF DEALING OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. LCT Software will not be responsible to the extent failure of the Service to operate as warranted is caused by or results from: (i) any modification to the Service other than a Supported Modification; (ii) combination, operation or use of the Service with Customer's or a third party's applications, software or systems; (iii) abuse, willful misconduct or negligence by anyone other than LCT Software or LCT Software's designee; (iv) use of the Service other than in accordance with the terms of this Agreement and/or the applicable Specifications and LCT Software documentation or (v) any of the SLC Exclusions (as defined in the Service Level Commitment).

**7. MUTUAL INDEMNIFICATION**

**7.1. Indemnification by Customer.** Customer will defend (or settle), indemnify and hold harmless LCT Software, its officers, directors, employees and subcontractors, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim that: (i) a third party has suffered injury, damage or loss resulting from Customer's or any End User's use of the Service (other than any claim for which LCT Software is responsible under Section 7.2); or (ii) Customer or any End User has used the Service in a manner that violates these Terms or applicable law. Customer's obligations under this Section 7.1 are contingent upon: (a) LCT Software providing Customer with prompt written notice of such claim; (b) LCT Software providing reasonable cooperation to Customer, at Customer's expense, in defense and settlement of such claim; and (c) Customer having sole authority to defend or settle such claim.

**7.2. Indemnification by LCT Software.** Party will defend (or settle) any suit or action brought against Customer to the extent that it is based upon a claim that the Service, as furnished by LCT Software hereunder, infringes or misappropriates the Intellectual Property Rights of any third party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. LCT Software's obligations under this Section 7.2 are contingent upon:

(a) Customer providing LCT Software with prompt written notice of such claim; (b) Customer providing reasonable cooperation to LCT Software, at LCT Software's expense, in the defense and settlement of such claim; and (c) LCT Software having sole authority to defend or settle such claim. THIS SECTION 7.2 STATES THE ENTIRE OBLIGATION OF LCT SOFTWARE AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE. LCT Software will have no liability under this Section 7.2 to the extent that any third-party claims described herein are based on any combination of the Service with products, services, methods, or other elements not furnished by LCT Software, or any use of the Service in a manner that violates this Agreement or the instructions given to Customer by LCT Software.

**7.3. Mitigation Measures.** In the event that (i) any claim or potential claim covered by Section 7.2 arises or (ii) LCT Software's right to provide the Service is enjoined or in LCT Software's reasonable opinion is likely to be enjoined, LCT Software may, in its discretion, seek to mitigate the impact of such claim or injunction by obtaining the right to continue providing the Service, by replacing or modifying the Service to make it non-infringing, and/or by suspending or terminating Customer's use of the Service with reasonable notice to Customer. In the case of a suspension or termination pursuant to this Section 7.3, LCT Software will refund to Customer a portion of fees prepaid by Customer for the then-current Subscription period, prorated to the portion of that Subscription period that is affected by the suspension or termination).

**8. LIMITATIONS OF LIABILITY.** EXCEPT THE PARTIES' INDEMNIFICATION OBLIGATIONS UNDER SECTIONS 7.1 AND 7.2, IN NO EVENT WILL PARTY'S LIABILITY TO OTHER PARTY OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE INCIDENT.

**8.1. Exclusion of Damages.** NEITHER PARTY NOR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICE WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR

CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE OF OR INABILITY TO USE THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY. THE FOREGOING EXCLUSIONS APPLY WHETHER OR NOT PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTHING IN THESE TERMS EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE.

**8.2. Security and Other Risks.** Customer acknowledges that, notwithstanding security features of the Service, no product, hardware, software or service can provide a completely secure mechanism of electronic transmission or communication and that there are persons and entities, including enterprises, governments and quasi-governmental actors, as well as technologies, that may attempt to breach any electronic security measure.

Subject only to its limited warranty obligations set forth in Section 6, LCT Software will have no liability for any security breach caused by any such persons, entities, or technologies. Customer further acknowledges that the Service is not guaranteed to operate without interruptions, failures, or errors. If Customer or End Users use the Service in any application or environment where failure could cause personal injury, loss of life, or other substantial harm, Customer assumes any associated risks and will indemnify LCT Software and hold it harmless against those risks.

**8.3. Basis of Bargain.** THE LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH IN THIS SECTION 8 ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN LCT SOFTWARE AND CUSTOMER AND WILL APPLY TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW.

**9. SUBSCRIPTION PERIOD AND TERMINATION** 9.1. **Term of End User Subscriptions.** End User Subscriptions purchased by Customer commence on the start date specified in the applicable Order and, unless terminated earlier in accordance with these Terms, continue for the term specified therein (the "Subscription Period"). A Subscription Period and/or pricing there on may be subject to prorating where LCT Software deems it appropriate to cause newly purchased Subscriptions to expire or renew simultaneously with Customer's pre-existing Subscription(s). Except as otherwise specified in the applicable Order, all Subscriptions will automatically renew for additional Subscription Periods equal to the expiring Subscription Period or one year (whichever is shorter), unless either party gives the other at least thirty (30) days' notice of non-renewal before the end of the relevant Subscription Period. The per-unit pricing during any such renewal Subscription Period may be subject to annual pricing increase as designated by LCT Software and notified to Customer. Pricing increases will be effective upon renewal of the Subscription Period and annually thereafter, unless otherwise agreed to by the parties. If either party provides notice of non-renewal as set forth above, Customer's right to use the Service will terminate at the end of the relevant Subscription Period.

9.2. **Termination or Suspension for Cause.** A party may terminate any Subscription for cause upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such thirty (30) day period. In addition, LCT Software may, at its sole option, suspend or terminate Customer's or any End User's access to the Service, or any portion thereof, immediately if LCT Software, in its sole discretion: (i) if suspects that any person other than Customer or an End User is using or attempting to use Security Data, (ii) suspects that Customer or an End User is using the Service in a way that violates these Terms and could expose LCT Software or any other entity to harm or legal liability, or (iii) is or reasonably believes it is required to do so by law or court order.

9.3. **Effect of Termination.** Within thirty (30) calendar days following the end of Customer's final Subscription Period, Customer may request in writing LCT Software to provide a copy of Customer's data and associated documents in a database dump file format. LCT Software will comply in a timely manner with such request; provided that, Customer (a) pays all costs of and associated with such copying, as calculated at LCT Software then-current time-and-materials rates; and (b) pays any and all unpaid amounts due to LCT Software.

9.4. **Surviving Provisions.** Sections 4 (Proprietary Rights), 5 (Confidentiality), 6.2 (Disclaimer), 7 (Mutual Indemnification), 8 (Limitation of Liability), 9.3 (Effect of Termination), 9.4 (Surviving Provisions) and 10 (General Provisions) will survive any termination or expiration of this Agreement.

10. **GENERAL** 10.1. **Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, or (iii) sending by confirmed email if sent during the recipient's normal business hours (or, if not, then on the next business day). Notices will be sent to the address specified by the recipient in writing when entering into this Agreement or establishing Customer's account for the Service (or such other address as the recipient may thereafter specify by notice given in accordance with this Section 10.1).

10.2. **Governing Law and Jurisdiction.** This Agreement and any action related thereto will be governed by the laws of the **State of Connecticut** without regard to its conflict of law's provisions. The exclusive jurisdiction and venue of any action related to the Service or this Agreement will be the state and federal courts located in **Connecticut** and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

10.3. **Compliance with Laws.** Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement including, but not limited to, export laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, Customer will not permit End Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction.

10.4. **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or similar relationship between the parties.

10.5. **Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

10.6. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

10.7. **Assignment.** Customer may not assign or transfer this Agreement, whether by operation of law or otherwise, without the prior written consent of LCT Software. Any attempted assignment or transfer, without such consent, will be void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.8. **Publicity.** Subject to the provisions of Section 5, each party will have the right to publicly announce the existence of the business relationship between parties. In addition, during the Subscription Period of Customer's Service use, LCT Software may use Customer's name, trademarks, and logos (collectively, "Customer's Marks") on LCT Software's websites and marketing materials to identify Customer as LCT Software's customer, and for providing the Service to Customer; provided that, LCT Software will use commercially reasonable efforts to adhere to any usage guidelines furnished by Customer with respect to Customer's Marks.

10.9. **Force Majeure.** The Parties will not be liable for any delay or failure to perform under this Agreement to the extent such delay or failure results from circumstances or causes beyond the reasonable control of the Party.

10.10. **Entire Agreement.** These Terms, including any attachments hereto as mutually agreed upon by the Parties, constitute the entire agreement between the parties concerning its subject matter and supersedes all prior communications, agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of these Terms will be effective unless in writing and signed by a duly authorized representative of each party against whom the modification,

amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in Customer's order documentation will be incorporated into or form any part of these Terms, and all such terms or conditions will be null.

**11.5. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this agreement~~PSA~~ will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**11.6. Severability.** If any provision of this PSA~~agreement~~ is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this agreement~~PSA~~ will remain in effect.

**11.7. Assignment.** Customer may not assign or transfer this PSA~~agreement~~ or any SOW~~or Order~~ hereunder, whether by operation of law or otherwise, without the prior written consent of LCT Software. Any attempted assignment or transfer, without such consent, will be void. Subject to the foregoing, this PSA~~agreement~~ will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**11.8. Publicity.** Subject to the provisions of Section 9, each party will have the right to publicly announce the existence of the business relationship between parties. In addition, during the Subscription Period of Customer's use of the Service, LCT Software may use Customer's name, trademarks, and logos (collectively, "Customer's Marks") on LCT Software's website and marketing materials to identify Customer as LCT Software's customer, and for providing the Service to Customer; provided that, LCT Software will use commercially reasonable efforts to adhere to any usage guidelines furnished by Customer with respect to Customer's Marks.

**11.9. Force Majeure.** LCT Software will not be liable for any delay or failure to perform under this PSA~~agreement~~ to the extent such delay or failure results from circumstances or causes beyond the reasonable control of LCT Software.

**11.10. Entire Agreement.** The parties acknowledge that they have had previous discussions related to the performance by LCT Software of Professional Services for Customer and the possible strategies which may be used by LCT Software to implement the Subscription Service to achieve the requirements identified by Customer. This PSA~~agreement~~, together with mutually agreed-upon attachments that are incorporated by reference herein, constitutes the entire agreement between the parties concerning its subject matter and supersedes all prior communications, agreements, proposals or representations, written or oral, concerning its subject matter.

Notwithstanding any language to the contrary therein, no additional or conflicting terms or conditions stated in Customer's Order, any SOW~~or other order~~ documentation will be incorporated into or form any part of this PSA~~agreement~~, and all such terms or conditions will be null. Under no circumstances will the terms, conditions or provisions of any RFP, purchase order, invoice or other administrative document issued by Customer in connection to this PSA~~agreement~~ be deemed to modify, alter or expand this PSA~~agreement~~, regardless of any failure of LCT Software to object to such terms, provisions, or conditions. No other act, document, usage, custom or waiver will be deemed to amend or modify this PSA~~agreement~~ unless agreed to in writing signed by a duly authorized representative of both parties. ~~In the event of any inconsistency or conflict between the terms of this PSA, and SOW, the terms of the SOW will control with regards to the project described.~~

## ITEM #6

6. To take such action as the meeting may determine, to approve the Consulting and Professional Services Agreement between the Town of Westport and Vision33 Inc. for the integration of DigEplan software into the Town's Accela permitting platform.

## SOFTWARE CONSULTING SERVICES AGREEMENT

This Software Consulting Services Agreement (the "Agreement") is entered into as of June \_\_\_\_, 2021 between Vision 33 Inc., a Delaware corporation with its principal place of business at 6 Hughes, Suite #220, Irvine, CA, 92618, USA ("Vision33") and the Town of Westport, a Connecticut municipal corporation, with its principal address at 110 Myrtle Avenue, Westport, CT 06880 USA (the "Town").

### *RECITALS*

The objective between Vision33 and the Town provided for in this Agreement is to describe the terms and conditions under which Vision33 will provide consulting services for the integration and deployment of the DigEplan software (the "Software") into the Town's existing Accela Civic Platform Software.

NOW THEREFORE, Vision33 and the Town agree as follows.

### **Section 1 CONSULTING SERVICES**

#### **1.1 VISION33'S RESPONSIBILITIES**

Vision33 agrees to provide the implementation, integration, deployment, consulting and training services described in that certain Statement of Work attached hereto as Exhibit A (the "SOW"). For purposes of this Agreement, the services described in the SOW shall be referred to as the "Services". Vision33 will complete the Services in accordance with the standards specified in the SOW by September 30, 2021, unless otherwise agreed in writing by the Town.

#### **1.2 STATUS OF THE SOW.**

The terms of the SOW are incorporated into this Agreement by reference. In the event of a conflict or inconsistency between the terms of this Agreement and the SOW, the terms of this Agreement shall control.

#### **1.3 AGREED CHANGES TO STATEMENT OF WORK**

Vision33 and the Town agree that the following changes shall supersede the corresponding provisions of the SOW:

- a) Page 2 of the SOW "Vision33 Statement of Confidentiality": This page is deleted. Vision33 understands that the Town is a municipality and is subject to the Connecticut Freedom of Information Act, and that this Agreement and the SOW are public records and are not confidential and that the SOW may be reproduced and communicated to others by the Town.
- b) Throughout the SOW, references to the "Town of Westport," "Client," and "Agency" refer to the Town.

- c) Page 11 of the SOW: The paragraph entitled "Expiration" is deleted.
- d) Page 11 of the SOW: In the paragraph entitled "Financials," the first sentence is deleted and replaced with the following: "Vision33's total price to perform the Services and provide the Deliverables described is TWENTY-TWO THOUSAND EIGHT HUNDRED SEVENTY U.S. DOLLARS (\$22,870) inclusive of taxes and expenses. Town will also pay LCT Software LLC the sum of TWENTY THOUSAND ONE HUNDRED SIXTY U.S. DOLLARS (\$20,160) for the DigEplan software subscription, subject to the terms of the Master Services Agreement between LCT Software LLC and the Town being executed on or about the date of this Agreement.

## **Section 2 FEES AND PAYMENTS**

### **2.1 PRICING AND PAYMENT**

The Town agrees to pay Vision33 the sum of TWENTY-TWO THOUSAND EIGHT HUNDRED SEVENTY U.S. DOLLARS (\$22,870), including all taxes and expenses, for the services performed under the SOW, to be paid by the Town as provided in the SOW.

## **Section 3 PROTECTION OF INTELLECTUAL PROPERTY RIGHTS**

### **3.1 COOPERATION**

The parties shall cooperate with each other in protecting their respective trade names, designs, trademarks and other similar intellectual property rights from unauthorized use.

## **Section 4 TERM AND TERMINATION**

### **4.1 TERM AND RENEWAL**

This Agreement shall enter into force for a period of one (1) year from the date signed unless earlier terminated in accordance with this Section 4. Notwithstanding, if Vision33 has completed the Services and the Town has paid in full all payments required hereunder prior to the expiration of one (1) year from the date of signing of this Agreement, then this Agreement shall terminate on such earlier date.

### **4.2 TERMINATION**

If a party breaches a material term and the breach remains uncorrected for thirty (30) days after receipt of a notice by the breaching party, the non-breaching party may, in addition to all other remedies available at law, terminate this Agreement by providing written notice to the breaching party, without further obligation provided, however, that, if the nature of the breach is such that it cannot be reasonably cured within such thirty (30) day period, the breaching party will not be deemed in default of this Agreement so long as such party commences efforts to effect a cure and is diligently pursuing such efforts and, provided, further, that, if the breach is as a result of the non-payment of any fee, the non-breaching party may terminate this Agreement if such breach remains uncorrected for ten (10) days after the breaching party's receipt of notice of the breach.

## **Section 5 REPRESENTATIONS AND WARRANTIES**

### **5.1 MUTUAL REPRESENTATIONS AND WARRANTIES**

Each party represents and warrants to the other that:

(a) it has the full corporate right and authority, and possesses all licenses, permits, authorizations and rights to intellectual property, necessary to enter into and perform this Agreement;

(b) its entry into and performance of this Agreement do not and will not conflict with or result in a breach or violation of any agreement or order by which it is bound; and

(c) this Agreement constitutes its legal, valid and binding obligations enforceable against it in accordance with the terms of this Agreement.

## **Section 6 DISCLAIMER, INDEMNIFICATION AND LIMITATION OF LIABILITY**

### **6.1 DISCLAIMER**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, VISION33 DOES NOT MAKE, AND HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE VISION33 SERVICES INCLUDING ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **6.2 INDEMNIFICATION**

Each party (the "Indemnifying Party") will defend, indemnify and hold harmless the other party (the "Indemnified Party") from and any against any and all third party claims, actions, losses (collectively, "Losses") resulting from or arising out of the Indemnifying Party's breach of any representation, warranty or other obligation set forth in this Agreement. The Indemnified Party shall not be entitled to be so indemnified unless it has given the Indemnifying Party prompt written notice of any Losses, afforded the Indemnifying Party the opportunity to assume sole control over the defence and settlement, if applicable, of the Losses, and provided the Indemnifying Party (at the Indemnifying Party's expense) all relevant information, assistance and authority to enable the Indemnifying Party to perform its obligations hereunder. The Indemnifying Party shall not settle any Losses without the Indemnified Party's written consent, which shall not be unreasonably withheld.

## **Section 7 INSURANCE AND NON-APPROPRIATION**

### **7.1 INSURANCE COVERAGE**

Vision33 shall acquire and maintain policies of Statutory Workers' Compensation Insurance, Comprehensive Liability Insurance and Auto Insurance in amounts not less than \$1,000,000 for bodily injury and \$1,000,000 for property damage, excess liability insurance in the amount of \$1,000,000 and Professional liability insurance in an amount not less than \$1,000,000.

### **8.2 NON-APPROPRIATION**

This Agreement is subject to and contingent upon the appropriation of funds by the Town, through its Board of Finance and Representative Town Meeting, in an amount necessary to implement the Town's obligations. If those funds are not appropriated, then this Agreement shall be considered terminated and the Town shall have no further obligation for payment hereunder.

## **Section 8 MISCELLANEOUS**

### **8.1 ASSIGNMENT**

This Agreement shall be binding on the parties, their successors and their permitted assigns. Neither party may assign its rights or obligations under this Agreement without the written consent of the other.

### **8.2 NO AGENCY**

Each party, in all matters relating to this Agreement, will act as an independent contractor and independent employer. Except as otherwise expressly set forth herein, neither party will have authority and will not represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other, or to represent the other as an agent, employee or in any other capacity. Nothing in this Agreement shall be construed to have established any agency, joint venture or partnership between the parties. Neither party shall make any warranties or representations on behalf of the other party.

### **8.3 GOVERNING LAW**

This Agreement, and all matters relating hereto, shall be governed in all respects by the laws of the State of Connecticut, excluding the application of any conflict of laws principles and/or rules. The parties hereby agree that all disputes arising out of this Agreement shall be subject to the exclusive jurisdiction of and venue in the competent courts located in the State of Connecticut, and consent to the personal and exclusive jurisdiction and venue of these courts.

### **8.4 SEVERABILITY**

In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

### **8.5 ATTORNEY'S FEES**

In any legal proceeding between the parties, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses.

### **8.6 FORCE MAJEURE**

If performance hereunder is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of a party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference.

### **8.7 ENTIRE AGREEMENT**

This Agreement, together with the SOW attached to it, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, any prior agreements with respect to the subject matter hereof. This Agreement specifically does not supersede the July 29, 2020 Saltbox Platform Services Agreement

between the parties. This Agreement may not be modified, amended or any provision waived except by the parties' mutual written agreement.

#### **8.8 NO WAIVER**

Failure by either party to enforce any provision of this Agreement (whether in any one or more instance) shall not be deemed a waiver of future enforcement of that or any other provision.

#### **8.9 NOTICE**

Any notices hereunder provided to Vision33 shall be given at the address specified below or at such other address as Vision33 specifies in writing. Any notices hereunder provided to Town shall be given at the address specified below or at such other address as Town specifies in writing. Any notice or other communication required to be given hereunder by either party shall be deemed duly given (a) when personally delivered to the other party, or (b) on the date of receipt when such notice was mailed by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth above, or such other address as either party may designate by giving written notice to the other; or (c) on the date of receipt when such notice was sent by facsimile or e-mail to the other party; provided the sending party receives a written or electronic notice of receipt from the other party of the facsimile or e-mail.

#### **8.10 COUNTERPARTS**

This Agreement 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 Agreement. The parties hereto agree that this Agreement may be transmitted between them or their respective attorneys by facsimile or electronic mail and, upon evidence of receipt of same, shall constitute delivery of this Agreement. The parties intend that faxed or electronic signatures constitute original signatures and that an Agreement containing the signatures (original, facsimile or electronic) of all the parties is binding on the parties once sent via facsimile or via electronic mail or delivered to the other party or the other party's attorney.

#### **8.11 CAPTIONS**

The captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of the provision set forth herein.

#### **8.12 TRADEMARKS, TRADE NAMES, LOGOS**

Except as expressly provided in this Agreement, no trademark, trade name, logo, trade dress, copyright or license therein, or other intellectual property rights (collectively, "Intellectual Property") are conveyed by this Agreement. Each party reserves the right to approve in advance the use of its Intellectual Property by the other party in each and every instance. All Intellectual Property owned by either party shall remain the exclusive property of such party and shall be returned to such party promptly after the expiration of this Agreement.

#### **8.13 AGREEMENT APPROVAL**

Each party hereby represents and warrants that all necessary corporate and/or governmental approvals for this Agreement have been obtained, and the person whose signature appears below has the authority necessary to execute this Agreement on behalf of the party indicated.

**8.14 SOPHISTICATION OF PARTIES**

Each party to this Agreement represents that it is a sophisticated commercial party capable of understanding all of the terms of this Agreement, that it has had an opportunity to review this Agreement with its counsel, and that it enters this Agreement with full knowledge of the terms of the agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorised representatives.

**TOWN OF WESTPORT**

**VISION33 INC.**

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

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

Name: James S. Marpe

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

Title: First Selectman

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

Notice Address: 110 Myrtle Avenue  
Westport, CT 06880 USA  
Attention: First Selectman

Notice Address: \_\_\_\_\_

ATTACHMENT: STATEMENT OF WORK



# Town of Westport CT

Statement of Work for Consulting and Professional Services

In Support of Electronic Document Review with DigEplan Integration to the Accela Civic Platform

**Presented by:**

Vision33 Inc.  
6 Hughes, Suite #220  
Irvine, California 92618  
[www.vision33.com](http://www.vision33.com)

**Contact:**

Johanna Brown, Account Manager  
(709) 746-7933  
[Johanna.Brown@Vision33.com](mailto:Johanna.Brown@Vision33.com)

## **VISION33 STATEMENT OF CONFIDENTIALITY**

The contents of this document shall remain the confidential property of Vision33 and may not be communicated to any other party without the prior written approval of Vision33. This document must not be reproduced in whole or in part. It must not be used other than for evaluation purposes only, except with the prior written consent of Vision33 and then only on condition that Vision33's and any other copyright notices are included in such reproduction. No information as to the contents or subject matter of this proposal or any part shall be given or communicated to any third party without the prior written consent of Vision33.

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## Document Control

Date	Author	Version	Change Reference
4/9/2021	Kristin Farmer	V1	
6/1/2021	Tara McCullough	V2	Updated training hours description

## Overview

The following Statement of Work provides details on how Vision33 will provide Town of Westport with professional services consulting in support of the client's EDR (Electronic Document Review) integration to DigEplan.

This Statement of Work ("SOW") sets forth a scope and definition of the consulting/professional services, work and/or project (collectively, the "Services") to be provided by Vision33 Inc. ("Vision33") to the Town of Westport, CA ("Client").

DigEplan delivers secure, web-based viewing for virtually any document type, including 2D CAD, Graphics, Office and PDF documents and enables users to view, annotate, stamp, convert, print and collaborate on these documents. Costly authoring applications are not required, and the intuitive interface can easily be used by all employees regardless of their technical skills. With DigEplan team members are connected to electronic documents in a digital process enabling faster decisions based on reliable, in-context information. By leveraging a single solution, the cost of purchasing, managing, and training employees to use multiple viewing and authoring applications is eliminated.

## Project Timeline

The expected duration of the EDR integration project is 2 months and is expected to run in parallel with the Westport Accela Implementation project.

## Detailed Project Scope

The following section describes the specific activities and tasks that will be executed to integrate Town of Westport's Electronic Document Review (EDR) with DigEplan to the Accela Civic Platform.

## **Project Management and Oversight**

Vision33 will provide a project manager for the implementation to plan and monitor execution of the project in accordance with deliverables outlined in the Statement of Work. Generally, these services include the following:

- Status reporting
- Change order management
- Resource management

## **Sample EDR Configuration Concepts**

The following is the concept of a possible EDR configuration. Vision33 will work with Town of Westport to determine specific EDR configuration requirements:

1. Submit a new application via ACA
2. Add attachments to the ACA page flow so the citizen/contractor can attach the plans
3. Trigger scripts when plans are accepted from the workflow. For example, a status of "Plans Accepted for Review" can trigger scripts.
4. Route plans to required reviewing departments
  - Each reviewer can now review the document
  - They can see their assignments either from the document task list in My Tasks, or their normal My Tasks list under the workflow tab.
  - They can click the Launch DigEplan link and start the plan review.
  - When they are done, they can either update the document review task or update the workflow.
  - Once all the parallel tasks are complete then the Plan Coordination step is now active.
  - If revisions are required
    - The Plan Coordinator can check in the document, and then update the workflow that revisions are required. Notification template emails can notify the primary applicant with instructions and include a deep link to the record on ACA.
    - Revised plans can be updated through ACA. A script can look for the resubmitted document and update the appropriate Task to "Re-submittal Received" when it has been uploaded. This could also trigger a notification to someone internally.
  - If Approved the workflow can forward to "Ready to Issue"
  - Scripts can be put in place that look at the reviews, so when updating to "Ready to Issue" if any of the reviews have "Revisions Required" it won't let them move forward.

## **Electronic Document Review Integration**

This section describes the tasks, responsibilities and assumptions that will enable submissions, review and markup of documents for Town of Westport's current configuration. Vision33 will work with Town of Westport to identify business requirements for EDR configuration, including:

- Plans that will be submitted online through Accela Citizen Access and Accela Automation as part of the review process.
- Agency workflows associated with the document review process.
- Requirements for workflow tasks / statuses / assignments for each role (e.g. intake personnel, plan reviewers, plan processors / approvers, etc.) in support of Agency workflow.
- Versioning of documents submitted / reviewed.
- Process steps within Town of Westport's workflow associated with reviewing the plan.
- Requirements for notifications via email.
- Stamps to be used on submitted documents.
- Information that will be exposed to the public via Accela Citizen Access.

### **Assumptions and Responsibilities:**

- Prior to configuration of EDR
  - Town of Westport will purchase licensing for DigEplan subscription
  - Town of Westport will be installed on Accela Automation 9 or higher.
- For the duration of the project Town of Westport will:
  - Make available the appropriate subject matter experts to provide needed information, participate in the analysis and verify the accuracy of the information provided.
  - Adhere to agreed-upon timelines
  - Provide access to Agency equipment and network.
- Implementation will take place in a SUPP environment and moved to PROD at go-live.
- The configuration of DigEplan Electronic Document Review will build on the configuration, record types, and workflow tasks Town of Westport already has in place and allow for modifications to the document review process. Processes to submit, review, and accept documents will leverage the current configuration.
- The configuration of DigEplan Electronic Document Review will build on Accela Citizen Access configuration that Town of Westport already has in place. Application processes through Accela Citizen Access will have already been configured and enabled. Configuration of new online applications and new or updated page flows constitutes additional scope.
- Town of Westport will work together with Vision33 on Stamp Creation.
- Town of Westport will use the EDMS/ADS currently in place for documents.
- In Final Testing and Acceptance, Town of Westport will:
  - Develop use cases / test cases needed to test the configuration.
  - Allocate appropriate staff to the testing effort to ensure that the system is operating per signed specifications and ready for the move to production.
  - Vision33 will provide testing support and recommended testing scenarios

## Integration Tasks

The Electronic Document Review implementation is comprised of the activities that will enable the submission, review, and markup of documents to work effectively given Town of Westport's configuration of Accela Automation. Vision33 will conduct the following activities in support of the implementation:

- **Site Deployment**
  - Vision33 Responsibilities:
    - LCT Software will provide hosted site
  - Assumptions:
    - Town of Westport will have Accela Document Service ADS installed and configured prior to the contract period of performance.
  
- **Analysis** - Vision33 will spend 8 hours working with Town of Westport to understand its document submission and approval process for permit record types in order to enable the DigEplan Electronic Document Review configuration to work effectively with Town of Westport's workflow.
  - Vision33 Responsibilities:
    - Vision33 will meet with Town of Westport for initial analysis of the processes, as well as conduct follow up meetings to clarify any requirements.
  - Agency Responsibilities:
    - Agency shall work with Vision33 on initial configuration analysis.
  - Assumptions:
    - Town of Westport will select decision makers to approve the process and make them available so as not to delay the schedule.
    - This is scoped to assume that the use of the current shared workflows across record types does not change or has minor changes.
  
- **Configuration** - Vision33 will configure to allow for electronic document review in Town of Westport's current workflows.
  - Vision33 Responsibilities:
    - Typical items for Vision33 to configure to enable EDR:
      - Standard choices: Document Status, Document Review Status, Virtual Folders, EDMS
      - User Groups: activate FIDs to allow for EDR
      - Attachments: Document group codes and document types
      - Workflow: Edit workflow tasks to allow for Plans Distribution and Plans Consolidation (if necessary)
      - **ACCELA WORKFLOW ANALYSIS AND CONFIGURATION NOT INCLUDED IN PROPOSAL- SEPARATE SCOPE TO BE PROVIDED**
      - Record/Application Type: Set document group code
      - Workflow email notifications: setup notifications
      - EDMS security policy: set document security for Public Users
  - Agency Responsibilities:

- Town of Westport will make changes to the ACA intake process to allow for intake of an application thru ACA
- Assumptions:
  - Configuration does not include adjustments to fee schedules.
  - EDMS will be configured and operable in AA prior to configuration.
- **EDR Scripting**
  - Vision33 Responsibilities:
    - Vision33 will provide the scripts for the following Events as needed to support EDR configuration requirements:
      - 1) WorkflowTaskUpdateAfter (WTUA): To satisfy requirements such as emailing the applicant when revisions/resubmittals are required OR when the application is approved.
      - 2) DocumentUploadAfter (DUA): To satisfy requirements such as “when awaiting a revision/resubmittal, when the document is uploaded, the workflow task status for Application Submittal will be updated AND optionally Town of Westport staff can be notified.”
      - 3) DocumentReviewUpdateAfter (DRUA): To satisfy requirements such as “when the Document Review Status is modified it will automatically update the Plan Review workflow task, alleviating the staff from having to update both.”
      - 4) DocumentUploadBefore (DUB): To satisfy requirements such as “prevent applicants from uploading new documents through ACA when the record’s application status is “In Review”.
  - Agency Responsibilities:
    - Town of Westport will provide access to configure the above items.
    - Town of Westport will provide approval for the use of the above scripts.
  - Assumptions:
    - The creation/configuration of Accela Electronic Document Review scripts will build on the configuration, record types, and workflow tasks Town of Westport already has in place and allow for modifications to the document review process.
- **Training**
  - Vision33 Responsibilities:
    - Vision33 will train a core project team.
    - Vision33 will include **8** hours of standard training on DigEplan Electronic Document Review and **12** hours for preparation and administrator tasks training.
  - Agency Responsibilities:
    - Town of Westport will provide suitable facilities, hardware, software and supporting equipment required for training – including fully configured workstations.
  - Assumptions:
    - Training participants will already have been trained in Accela Automation.
    - Training will focus on leveraging the functionality of Accela EDR.
    - Training will be conducted in a Test environment.

- **Stamp and Report Creation**
  - Vision33 Responsibilities:
    - Vision33 will create a few basic stamps. This is an estimated **12** hours of support. The number of stamps will depend on the complexity and how many can get created with the hours allocated for the report and stamps.
  - Agency Responsibilities:
    - Town of Westport will be responsible for creating any additional stamps beyond the time allotted by Vision33.
  - Assumptions:
    - Example stamps will be provided by DigEplan.
  
- **Report Development Support** - Vision33 will provide up to **24** hours of support for report creation. DigEplan will provide sample out of the box reports as a starting point.
  
- **ACA Configuration Updates** - Vision33 will provide up to **16** hours of support to assist Agency staff in updating Town of Westport existing ACA configuration as needed to take better advantage of EDR functionality.
  
- **Go live support** - Vision33 will provide up to **16** hours of support during and after go-live.

## **DigEplan – Server Requirements**

Town of Westport has chosen to be hosted by DigEplan so there are no internal server requirements.

## **Project Control and Reports**

The specific reporting for this project will be identified and agreed upon between Vision33 and the Client during Project Initiation.

## **Change Orders**

In order to make a change to the scope of Professional Services in this SOW, the Agency must submit a written request to Vision33 specifying the proposed changes in detail. Vision33 shall submit to the Agency an estimate of the charges and the anticipated changes in the delivery schedule that will result from the proposed change in the Professional Services (“Change Order”). Vision33 shall continue performing the Professional Services in accordance with the SOW until the parties agree in writing on the change in scope of work, scheduling, and fees, therefore. Any Change Order shall be agreed to by the parties in writing prior to implementation of the Change Order. If Vision33’s effort changes due to changes in timing, roles, responsibilities, assumptions, scope, etc. or if additional support hours are required, a change

order will be created that details these changes, and impact to project and cost (if any). Any change order shall be signed by Vision33 and Client prior to commencing any activities defined in the change order.

## Projects Put on Hold

It is understood that sometimes Agency priorities are revised requiring the Agency to place the Accela implementation on hold. The Agency must send a formal written request to Vision33 to put the project on hold. A project can be on hold for up to 90 days without invoking a termination of this contract. After that time, Vision33 can choose to cancel the rest of the Statement of Work. To finish the project will require a new Statement of Work at new pricing. The only exception to this policy is an 'Act of God' such as hurricane, flood, etc. that the Agency experiences in which case no termination clause will be executed unless the Agency specifically requests it.

When a project is put on hold, at minimum, Vision33 will need to draft a Change Order to keep some of the Vision33's project manager's time engaged to monitor progress and to resource the project once it comes off hold. The amount of time will be negotiated on a case by case basis. Other Change Order items may be needed because of the delay. When a project goes on hold, project resources will be re-deployed and Vision33 will need a forty-five (45) calendar day notice to re-staff the project. Resumption of the project will be dependent upon Vision33 resourcing timelines.

Should the Agency become non-responsive to Vision33 communications for a term of 30 calendar days regarding continuance of the project work, Vision33 can choose to cancel the remainder of the Statement of Work.

## Expiration

The scope and terms of this SOW must be executed within sixty (60) calendar days of the date of this SOW. If the SOW is not executed, then the current scope and terms can be renegotiated.

## Expenses

Vision33 has provided an all-inclusive rate for this project inclusive of travel, therefore no additional costs for expenses will be charged to the Client.

## Financials

Vision33 total price to perform the Services and provide the Deliverables described is \$44,160 USD inclusive of taxes and expenses. The price is based on the information available at the time of signing and the assumptions, dependencies and constraints, and roles and responsibilities of the Parties, as stated in this SOW. Should there be changes to the scope, timeline or resources

that increases the hours or costs needed to complete the project, a Change Order may be required prior for project continuation.

## **Payment Terms**

Town of Westport will compensate Vision33 monthly as time is incurred on tasks. The budget for the project is defined below. Invoices for time incurred will be sent monthly for work completed. Invoices are due net 30 of the invoice date.

## **Project Budget**

### **Software Subscription Costs – DigEplan**

Product Subscription	Per Year	Users	Amount
V4 (SaaS) Hosted by DigEplan (\$89 per month per user 1 to 10)	\$1,068	10	\$10,680
V4 (SaaS) Hosted by DigEplan (\$79 per month per user 11 to 20)	\$948	10	\$9,480
<b>Subscription Pricing for Year 1</b>		<b>20</b>	<b>\$20,160</b>

**Note: This is a yearly expense**

Azure infrastructure in North American Jurisdiction.  
 Constant deployment model will be used to provide regular updates and new features as part of the SaaS Agreement

### **Implementation Services - Vision33**

Task	Hours	Rate	Amount
Project Management	8	\$135	\$1,080.00
Business Analyst (oversight)	40	\$160	\$6,400.00
EDR Installation DEV and PROD (For LCT)	10	\$135	\$1,350.00
EDR Analysis		\$135	Further Analysis
EDR Configuration and Scripting		\$135	Further Analysis
EDR Tool Training (Remote via web meeting)	20	\$135	\$2,700.00
Stamp Creation	12	\$135	\$1,620.00
Report Development	24	\$135	\$3,240.00
ACA Configuration Updates	16	\$135	\$2,160.00
Testing and Go Live Prep	16	\$135	\$2,160.00
Go Live Support	16	\$135	\$2,160.00
<b>Service totals</b>	<b>162</b>		<b>\$22,870.00</b>

All rates are in United States Dollars (USD).

## Approval

Vision33 Inc. (Vision33)		Town of Westport	
Signature		Signature	
Name		Name	
Title		Title	
Date		Date	

ITEM #7

7. To take such action as the meeting may determine, acting in its capacity as the Water Pollution Control Authority, to approve the request for the supplemental sanitary sewer connection at 950 Post Road East, contingent upon compliance with the WPCA Collection System Supervisor's letter of May 28, 2021.



**WESTPORT**

**DEPARTMENT OF PUBLIC WORKS**

TOWN HALL, 110 MYRTLE AVENUE  
WESTPORT, CONNECTICUT 06880  
(203) 341 1120 [www.westportct.gov](http://www.westportct.gov)

May 28, 2021

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

Re: **Supplemental Sanitary Sewer Connection**  
**#950 Post Road East**  
**List #8477, GIS ID F09/059/000, Sewer Acct# 3-00275**  
**EWKAI 950 Post Road East, LLC- Owner**  
**Coastal Luxury Homes, LLC – Contract Purchaser**

Dear Mr. Marpe:

This office is in receipt of correspondence dated February 5, 2021 to the Water Pollution Control Authority, seeking approval for a supplemental sewer connection of a proposed residential development. The contract purchaser has received Planning and Zoning approval for a Zone change permitting them to build a multi-unit residential development.

The existing property was originally assigned two and one quarter (2.25) benefit assessment units, commercial retail use. The proposed development plans for nine (9) single-bedroom units, five (5) two-bedroom units that will result in an increase of benefit assessment units to seven and one quarter (7.25) units. Therefore the Authority must approve the connection request and assign an additional seven and one quarter (7.25) supplemental benefit assessment units for the property before a "Sanitary Sewer Connection Permit" can be issued by this office.

It is the recommendation of this office that the Authority approve the connection request and supplemental assessment, 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" from the Westport Department of Public Works.
- 3) All plans and installation shall be subject to approval by this office and must 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 an additional sanitary sewer benefit assessment as if it was included under Sanitary Sewer Contract No. 1, amounting to \$2,033.00 for each additional unit assessed. For the subject property, it is recommended that an additional seven and one quarter (7.25) units, a total of \$14,739.00 be assessed.

May 28, 2021

Re: Supplemental Sanitary Sewer Connection  
#950 Post Road East

- 5) In accordance with the "Inflow and Infiltration (I&I) Abatement Policy" the property shall be subject to the I&I Abatement Fee for the increased sewer flows generated by their proposed development, post development increased sewer flows have been calculated to be 9,024gpd. Therefore, the I&I Abatement Fee is equal to the post development flow of 9,024gpd multiplied by \$5.33/gpd for a total I&I Abatement Fee of \$48,100.00. The abatement fee shall be paid to the Town Sewer Reserve Account for I&I Abatement prior to the issuance of a "Sanitary Sewer Connection Permit".
- 6) There shall be no credits to the property owners.
- 7) A charge of \$250.00 shall be levied against the property should the owners subsequently wish to rescind the supplemental sanitary sewer connection approved by the Authority.

Respectfully,



Bryan H. Thompson  
WPCA Collection System Supervisor

CC: Peter A. Ratkiewich, Director of Public Works  
Mary Young, Director of Planning and Zoning

February 5, 2021

Mr. Jim Marpe, First Selectman  
Water Pollution Control Authority  
Town of Westport  
110 Myrtle Ave,  
Westport CT 06880

**RE: Sanitary Sewer Assessment/Use  
950 Post Road East – Westport, CT**

Dear Mr. Marpe,

On behalf of the developer of 950 Post Road East, we request approval of additional sewage units and a new sewer assessment for the proposed redevelopment of the property. The property is currently developed with a 6,617± sf retail building (formerly Men's Warehouse) that is proposed to be converted into a residential development consisting of fourteen (14) total units (9-1 bedroom and 5-2 bedroom units). Attached, please find five (5) copies of the Sewer Unit and Water Usage comparisons as well as the Anticipated Fee analysis in support of this request.

A review of the attached indicates an increase in both sewer units and anticipated water usage upon completion of the development. It is noted that this development will discharge through Pump Station #9 and Pump Station #1. A report issued by this office in January 2018 as part of the redevelopment of 1141 Post Road East to its current use as an assisted living facility indicates that Pump Station #9 has a design capacity of 1,660 gpm with an estimated current operational flow of 804 gpm. The proposed development will increase flow to Pump Station #9 by 6.3 gpm which is a de minimis increase and will not adversely impact the operation of Pump Station #3.

This redevelopment project is currently in the approval phase through the various town agencies. To keep in line with our current schedule, we request that you place us on the earliest available Water Pollution Control Authority agenda for consideration.

Should you have any questions or require additional information, please do not hesitate to contact our office at (203) 327-0500.

Sincerely,



David R. Ginter, P.E.

Enclosures:

Coastal Luxury Homes  
Redniss & Mead

H:\Jobfiles2\9000\9600\9636\Documents\Engineering\Sewer\9636 WPCA Request Letter.docx

### Assessment and Flow Calculations

Project: 950 Post Road East	Project #: 9636	Date: 1/25/2021
Location: Westport, CT	By: DRG	Checked: DRG

#### Existing Conditions

Use	Unit Rate	Qty.	Units
Retail	Existing Assessment	-	2.25
<b>Total:</b>			<b>2.25</b>

#### Proposed IHZ Development

Use	Unit Rate	Qty.	Units
1 Bedroom Apt	0.50 unit/ea	9	4.5
2 Bedroom Apt	1.00 unit/ea	5	5.0
<b>Total:</b>			<b>9.5</b>

#### Existing Conditions Wastewater Flow

Use	Floor Area	Average Yearly Water Use (ccf)	Existing Flow by Water Consumption
Retail	6,617 sf	262.0	537 gpd
<b>Average Daily Flow</b>			<b>537 gpd</b>
<b>Peak Flow</b>			<b>2,148 gpd</b>
<b>Peak Flow</b>			<b>1.5 gpm</b>

#### Proposed Conditions Wastewater Flow

Use	# of Units	People per Unit	Total People	Flow/Person	Anticipated Flow
1 Bedroom	9	1.5	14	98 gpd	1,323 gpd
2 Bedroom	5	3	15	98 gpd	1,470 gpd
<b>Average Daily Flow</b>					<b>2,793 gpd</b>
<b>Peak Flow</b>					<b>11,172 gpd</b>
<b>Peak Flow</b>					<b>7.8 gpm</b>

**Notes:**

- Existing Average Water Usage provided by Town of Westport and Aquarion Water Company records:

## Sanitary Sewer Fee Analysis

<b>Project:</b> 950 Post Road East	<b>Project #:</b> 9636	<b>Date:</b> 1/25/2021
<b>Location:</b> 950 Post Road East, Westport, CT	<b>By:</b> DRG	<b>Checked:</b> DRG

Anticipated Sewer Assessment Fee	
Existing Sewer Unit Assessment	2.25 units
Proposed Sewer Unit Assessment	9.5 units
Increase in Sewer Unit Assessment	7.25 units
Anticipated Sewer Assessment Fee	\$14,739

Anticipated Inflow and Infiltration (I&I) Abatement Fee	
Existing Peak Flow	2,148 gpd
Proposed Peak Flow	11,172 gpd
Increase in Peak Flow	9,024 gpd
Anticipated I&I Abatement Fee	\$48,100

Notes:

1. Anticipated Sewer Assessment Fee = Increase in Sewer Unit Assessment x \$2,033/unit
2. Anticipated I&I Abatement Fee = Increase in Peak Flow x \$5.33/gpd

ITEM #8

8. To take such action as the meeting may determine, upon the request of the Audit Manager, to approve the Audit Engagement Letter between the Town of Westport and CliftonLarsonAllen as it relates to the Systems Utilization Assessment of Human Resources & Payroll Functions for the Town and the Westport Public Schools.



CLA (CliftonLarsonAllen LLP)  
29 South Main Street  
West Hartford, CT 06127  
860-561-4000 | fax 860-521-9241  
CLAconnect.com

June 7, 2021

Ms. Lynn Scully  
Audit Manager  
Westport Town Hall  
110 Myrtle Avenue  
Westport, CT 06880

Dear Lynn:

We are pleased to confirm our understanding of the terms, objectives, and scope of our engagement and the nature and limitations of the services CliftonLarsonAllen LLP ("CLA," "we," "us," and "our") will provide for the Town of Westport ("you," "your," or "the Town"). This letter confirms our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide. The intentions of this letter are to confirm your understanding of, and agreement with, what is included with our services, as well as the limitations of the accounting and advisory services you have asked us to perform.

**Scope of Professional Services:**

**SYSTEMS UTILIZATION ASSESSMENT OF HUMAN RESOURCES AND PAYROLL FUNCTIONS FOR BOTH THE TOWN AND WESTPORT PUBLIC SCHOOLS (WPS)**

As directed by Town management, we will fulfill the Town's request to perform a Systems Utilization Assessment of Human Resources and Payroll functions for both the Town and Westport Public Schools (WPS) engagement. The approach and deliverables for this project will be agreed to by Town's Audit Manager prior to the start of this engagement.

Outlined below are the services to be included for this engagement.

As part of this engagement, the Town of Westport would like CLA to perform a Systems Utilization Assessment of Human Resources and Payroll functions assessments for the Town and WPS. At all times, the responsibility for reviewing and approving these services and the related results rests with the management of the Town. The scope of this engagement will be as follows.

**1. Town and Westport Public Schools –Systems Utilization Assessment of Human Resources and Payroll functions**

- a. Assess the current state of system(s) utilization for Human Resource/Payroll activities, with the goal of identifying opportunities for greater utilization and/or process/efficiency improvement.
- b. Identify all applications/systems that are used to account for employee-related data, along with their respective annual cost (include any annual costs associated with training/support).
- c. Assess the adequacy and utilization of these systems in effectively meeting the current and future informational needs and functions of the Town/WPS.
  - i. Identify any key functions and/or features that are not being currently used and/or not available within the application(s).
- d. Assess the adequacy of employee training and support associated with these systems.
- e. Assess the overall system security.
- f. Assess the infrastructure/platform and stability of these applications.

- g. Determine the implementation status of prior internal audit recommendations as they relate to systems/applications.
- h. Document findings and gaps observed as part of the review.
- i. Provide constructive and practical recommendations.

If any significant issues are identified with this engagement, we will immediately discuss them with the Audit Manager and determine if the scope of services needs to be expanded.

This engagement is limited to the scope of services outlined above. We, in our sole professional judgment, reserve the right to refuse to take any action that could be construed as making management decisions or performing management functions. We will not perform management functions or make management decisions for you. However, we may provide advice, research materials and recommendations to assist your management in performing its functions and making decisions within the scope of this engagement. You agree that you will not and are not entitled to rely on any advice unless it is provided in writing.

The above services will be performed based upon information you provide to us. We will perform our services under the assumption that all information you submit is true, complete, and accurate according to documents and other information retained in your files. We will not verify or audit this information.

We will not prepare your financial statements and no accountant's report will be prepared or submitted as a result of this engagement. If you wish to engage our firm to perform financial statement preparation or compilation services, we will confirm this arrangement in a separate engagement letter and determine the additional charges for this service.

### **Management Responsibilities**

For all services we may provide to you, management agrees to assume all management responsibilities; oversee the services by designating an individual, preferably within senior management, who possesses suitable skill, knowledge, and/or experience to understand and oversee the services; evaluate the adequacy and results of the services; and accept responsibility for the results of the services.

Our engagement cannot be relied upon to disclose errors, fraud, or illegal acts. However, we will inform the appropriate level of management of any material errors and of any evidence or information that comes to our attention during the performance of our services that fraud may have occurred. In addition, we will inform you of any evidence or information that comes to our attention during the performance of our services regarding illegal acts that may have occurred, unless they are clearly inconsequential. Except as described in the scope of professional services section of this letter, we have no responsibility to identify and communicate deficiencies in your internal control as part of this engagement.

### **Administration**

The engagement partner is Jeffrey Ziplow, MBA, CISA, CGEIT, and he is responsible for supervising the services to be provided.

All Town and WPS records remain the property of the Town and WPS. All original records and documents provided to us will be returned to the Town/WPS at the completion of our engagement. It is the Town's responsibility to maintain and preserve these records. The Town's records are provided to us only as needed to complete our engagement. Our records and files are our property and are not a substitute for the Town's records.

We will not be responsible for the Town's failure to meet regulatory and other deadlines as a result of management failing to provide information in a timely manner or for any resulting penalties, interest or other damages that may be incurred.

#### **Fee and Terms**

Our professional fees will be as follows based on complexity of the internal audit engagements as per the terms, conditions, and insurance requirements of State of CT contract #16PSX0081.

<u>Item</u>	<u>Engagement Description</u>	<u>Proposed Fees</u>
1.	Systems Utilization Assessment of Human Resources and Payroll	\$19,500

Our fees are based on our initial understanding of the engagement and based on anticipated cooperation from your personnel and their assistance with preparing requested documentation. To ensure that our services remain responsive to your needs, as well as fair to both parties, we will meet with you throughout the term of the agreement and, if necessary, revise or adjust the scope of the services to be provided and the fees to be charged. If unexpected circumstances require significant additional time, we will advise you before undertaking work that would require an increase in the fees.

Our invoices will be rendered monthly and are payable on presentation. Terms of payment for services are net 30 days. In accordance with our firm policies, work may be suspended if your account becomes 90 days or more overdue and will not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed. You will be obligated to compensate us for all time expended and related fees and to reimburse us for all out-of-pocket expenditures through the date of termination.

#### **Limitation of Remedies**

Our role is strictly limited to the engagement described in this letter, and we offer no assurance as to the results or ultimate outcomes of this engagement or of any decisions that you may make based upon our communications with, or our reports to, you. You agree that it is appropriate to limit the liability of CLA, its partners, principals, directors, officers, employees, and agents ("we" or "us") and that this limitation of remedies provision is governed by the laws of the State of Connecticut, without giving effect to choice of law principles.

You further agree that you will not hold us liable for any claim, cost, or damage, whether based on warranty, tort, contract, or other law, arising from or related to this agreement, the services provided under this agreement, the work product, or for any plans, actions, or results of this engagement, except to the extent authorized by this agreement. In no event shall we be liable to you for any indirect, special, incidental, consequential, punitive, or exemplary damages, or for loss of profits or loss of goodwill, costs, or attorneys' fees.

The exclusive remedy available to you shall be the right to pursue claims for actual damages that are directly caused by acts or omissions that are breaches by us of our duties under this agreement, but any recovery on any such claims shall not exceed the fees actually paid under this agreement by you to CLA.

**Time Limitation**

The nature of our services makes it difficult, with the passage of time, to gather and present evidence that fully and fairly establishes the facts underlying any dispute that may arise between us. The parties (you and CLA) agree that, notwithstanding any statute or law of limitations that might otherwise apply to a dispute, any action or legal proceeding by you against us must be commenced within twenty-four (24) months ("Limitation Period") after the date when we deliver our final work product under this agreement to you, regardless of whether we perform other services for you, or you shall be forever barred from commencing a lawsuit or obtaining any legal or equitable relief or recovery.

The Limitation Period applies and begins to run even if you have not suffered any damage or loss or have not become aware of the existence or possible existence of a dispute.

**Other Provisions**

CLA will not disclose any confidential, proprietary, or privileged information of the Town/WPS's to any persons without the authorization of the Town management.

We will be responsible for our own property and casualty, general liability, and workers compensation insurance, taxes, professional training, and other personnel costs related to the operation of our business.

The relationship of CLA with the Town shall be solely that of an independent contractor and nothing in this agreement shall be construed to create or imply any relationship of employment, agency, partnership, or any relationship other than an independent contractor.

If applicable, accounting standards and procedures will be suggested and applied that are consistent with those normally utilized in an organization of your size and nature. Internal controls may be recommended relating to the safeguarding of the Town's assets. If fraud is initiated by your employees or other service providers, your insurance is responsible for covering any losses.

The Town agrees that CLA will not be assuming any fiduciary responsibility on your behalf during the course of this engagement.

**Agreement**

We appreciate the opportunity to be of service to you and believe this letter accurately summarizes the significant terms of our engagement. This letter constitutes the entire agreement regarding these services and supersedes all prior agreements (whether oral or written), understandings, negotiations, and discussions between us. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign, date, and return a copy to us.

We look forward to a successful completion of the project.

**CLA (CliftonLarsonAllen LLP)**



Jeffrey Ziplow, MBA, CISA, CGEIT  
Principal  
860-561-6815  
Jeffrey.Ziplow@claconnect.com

**Acceptance and acknowledgement**

On behalf of the Town of Westport I acknowledge that the terms of this agreement accurately state our understanding with CLA, and the Town of Westport agrees to be bound by them.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_