

**TOWN OF CHESHIRE
REQUEST FOR QUALIFICATIONS AND PROPOSALS**

RFQ/P #2324– 15

Structural Peer Review Consulting Services

for the New North End School Design and Construction

INTRODUCTION

The Town of Cheshire hereby requests statements of qualifications and proposals, respectively, for structural peer review consulting services in connection with the design and construction of the new North End Elementary School located at the corner of Marion Road and Jarvis Street, Cheshire, Connecticut 06410. This procurement is made pursuant and is subject to C.G.S. section 10-287 in all respects.

All Statements of Qualifications and Proposals, respectively, must be submitted in writing and in the form set forth in this Request for Qualifications and Proposals, and delivered in sealed envelopes (SOQ and Proposal shall be in separate envelopes) to the attention of Sean M. Kimball, Town Manager, Cheshire Town Hall, 84 South Main Street, Cheshire, CT 06410. Statements of Qualifications and proposals shall be delivered to the Town by no later than 2:00 PM on January 17, 2024.

GENERAL INFORMATION

The selected firm will have the responsibility to provide the scope of services described herein through its own firm's capabilities and/or consultants as expressly approved by the Owner. The basic project information (to be confirmed by the consultant) is as follows:

- The proposed structure will be approximately 115,465 GSF
- The proposed structure will have two floors of classrooms
- Common area spaces, i.e. Gym, Media Center, Cafeteria will be large open spanned
- The proposed structure will consist of cast-in-place concrete frost walls and structural steel framing
- The project architect is Tecton Architects.
- The project structural engineer is Michael Horton Associates

FIRMS INTENDING TO SUBMIT A STATEMENT OF QUALIFICATIONS AND PROPOSALS FOR CONSIDERATION SHOULD CONTACT:

RICH SITNIK rich.sitnik@arcadis.com TO OBTAIN A LINK TO (1) AVAILABLE DOCUMENTS.

SCOPE OF SERVICES

BASIC SCOPE OF SERVICES

The basic scope of structural engineering services shall be based on the above noted project description:

PHASE 1 - Independent Structural Engineering Review as outline in the ACEC Structural Engineer Coalition's "Recommended Guidelines for Performing an Independent Structural Engineering Review in the State of Connecticut by an Independent Structural Engineer: Basic Services."

- Review design criteria indicated and compare to minimum code requirements.
- Review subsoil information and recommendations regarding building foundations by geotechnical engineer.
- Conduct bay studies of structural systems to determine conformance with the minimum requirements of code and design criteria.
- Review a random selection of purlins and girders for vibration.
- Review a random selection of concrete slabs on metal deck for structural adequacy.
- Review lateral force resisting system for conformance with the minimum requirements of the building code and design criteria.
- Review a random selection of foundations for conformance.
- Review proposed sections and details for potential coordination conflicts.
- Review a random selection of connections.
- Review structural specifications.

Review the primary structural systems of both the superstructure and foundations. The Structural Engineer-of-Record will furnish calculations for the primary structural systems upon request for review. At the conclusion of Phase 1, prepare a written report regarding your findings for review and response by the Architect and Structural Engineer-of-Record.

PHASE 2 – Statement of Professional Opinion

- Review responses from the Architect and Structural Engineer-of-Record
- Discuss any remaining review / design issues with the design team (Architect and Engineer) for resolution.
- Prepare a written opinion statement regarding the findings of our review to present to the Owner and for the local Building Official.

PHASE 3 - Construction Phase Structural Engineering Review

- Review any major revisions to the primary structural systems during the construction phase for conformance with the minimum requirements of code and design criteria.
- Review any delegated design submittals associated with primary structural submittals such as structural steel connection designs and cold-formed metal framing.

PROCUREMENT PROCESS

Following receipt of the Statement of Qualifications and a Proposal, respectively, a working group of the Next Generation School Building Committee (NGSBC) will rank the submissions and submit its results to the full NGSBC for consideration. The proposals from the shortlisted firms will then be opened and evaluated. The proposal must be submitted with proposed fees set forth on the attached Proposal Form(s) A1 & A2.

LUMP SUM FEE – Broken down by each phase of work.

HOURLY RATES – Include

Anticipated Schedule

- Issuance of RFQ/P: December 20, 2023
- Questions due no later than: January 9, 2024
- Submission of Qualifications and Proposals: January 17, 2024
- NGSBC Selection of Firm: January 25, 2024
- Town Council Approval of NGSBC Selection: February 13, 2024

QUALIFICATIONS

In your Statement of Qualifications, include the credentials and experience of the staff that will be performing the inspections and a list of similar projects for which your firm has performed the services procured hereunder. The fee shall be provided as a lump sum on the form provided herewith and shall exclude federal, state, and local taxes. Provide hourly rates for performing services under this proposal.

STANDARD CONTRACT TERMS

The following provisions will be mandatory terms of the Town's Contract with the chosen Firm. By submitting a proposal, you agree that if awarded a contract, you will, within five days of notice of award, execute the contract provided by the Town without alteration or modification. If you are unwilling or unable to comply with these terms, or seek to clarify or modify, any of these Contract Terms, you must disclose that inability, unwillingness, clarification and/or modification in your proposal:

a. DEFENSE, HOLD HARMLESS AND INDEMNIFICATION

The chosen Firm agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless the Town, its employees, officers, officials, agents, volunteers and independent contractors, including any of the foregoing sued as individuals (collectively, the "Town Indemnified Parties"), from and against all proceedings, suits, actions, claims, damages, injuries, awards, judgments, losses or expenses, including attorney's fees, arising out of or relating, directly or indirectly, to the chosen Firm's malfeasance, misconduct, negligence or failure to meet its obligations under the RFQ/P or the Contract. The chosen Firm's obligations under this section shall not be limited in any way by any limitation on the amount or type of the chosen Firm's insurance.

The chosen Firm shall also be required to pay any and all attorney's fees incurred by the Town in enforcing any of the chosen Firm's obligations under this section. The chosen Firm's obligations under this section shall survive the termination or expiration of the Contract.

As a municipal agency of the State of Connecticut, the Town will NOT defend, indemnify, or hold harmless the chosen Firm.

b. ADVERTISING

The chosen Firm shall not name the Town in its advertising, news releases, or promotional efforts without the Town's prior written approval.

If it chooses, the chosen Firm may list the Town in a Statement of References or similar document required as part of its response to a public procurement. The Town's permission to the chosen Firm to do so is not a statement about the quality of the chosen Firm's work or the Town's endorsement of the chosen Firm.

c. W-9 FORM

The chosen Firm must provide the Town with a completed W-9 form before Contract execution.

d. PAYMENTS

All payments are to be made 30 days after the appropriate Town employee receives and approves the invoice from the NGSBC.

e. MAINTENANCE AND AVAILABILITY OF RECORDS

The chosen Firm shall maintain all records related to the work described in the RFQ/P for a period of seven (7) years after final payment under the Contract or until all pending Town, state and federal audits are completed, whichever is later. Such records shall be available for examination and audit by Town, state, and federal representatives during that time.

f. SUBCONTRACTING

The chosen Firm shall not subcontract, transfer, or assign all or any portion of its obligations under the Contract.

g. COMPLIANCE WITH LAWS

The chosen Firm shall comply with all applicable laws, regulations, ordinances, codes and orders of the United States, the State of Connecticut and the Town related to its proposal and the performance of the Contract.

h. NONDISCRIMINATION AND AFFIRMATIVE ACTION

In the performance of the Contract, the chosen Firm will not discriminate or permit discrimination in any manner prohibited by the laws of the United States or of the State of Connecticut against any person or group of persons on the grounds of race, color, religious creed, age (except minimum age), marital status or civil union status, national origin, ancestry, sex, sexual orientation, mental retardation, mental disability or physical disability, including but not limited to blindness, unless the chosen Firm shows that such disability prevents performance of the work involved.

Any violation of these provisions shall be considered a material violation of the Contract and shall be grounds for the Town's cancellation, termination, or suspension, in whole or in part, of the Contract and may result in ineligibility for further Town contracts.

i. LICENSES AND PERMITS

The chosen Firm certifies that, throughout the Contract term, it shall have and provide proof of all approvals, permits and licenses required by the Town and/or any state or federal authority. The chosen Firm shall immediately and in writing notify the Town of the loss or suspension of any such approval, permit or license.

j. CESSATION OF BUSINESS/BANKRUPTCY/RECEIVERSHIP

If the chosen Firm ceases to exist, dissolves as a business entity, ceases to operate, files a petition or proceeding under any bankruptcy or insolvency laws or has such a petition or proceeding filed against it, the Town has the right to terminate the Contract effective immediately. In that event, the Town reserves the right, in its sole discretion as it deems appropriate and without prior notice to the chosen Firm, to make arrangements with another person or business entity to provide the services described in the Contract and to exercise any or all of its rights at Law, in equity, and/or under the Contract.

k. AMENDMENTS

The Contract may not be altered or amended except by the written agreement of both parties.

l. ENTIRE AGREEMENT

It is expressly understood and agreed that the Contract contains the entire agreement between the parties, and that the parties are not, and shall not be, bound by any stipulations, representations, agreements or promises, oral or otherwise, not printed or inserted in the Contract or its attached exhibits.

m. VALIDITY

The invalidity of one or more of the phrases, sentences or clauses contained in the Contract shall not affect the remaining portions so long as the material purposes of the Contract can be determined and effectuated.

n. CONNECTICUT LAW AND COURTS

The Contract shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Connecticut, and the parties irrevocably submit in any suit, action or proceeding arising out of the Contract to the jurisdiction of the United States District Court for the District of Connecticut or of any court of the State of Connecticut, as applicable.

o. NON-EMPLOYMENT RELATIONSHIP

The Town and the chosen Firm are independent parties. Nothing contained in the Contract shall create, or be construed or deemed as creating, the relationships of principal and agent, partnership, joint venture, employer and employee, and/or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms and conditions of the Contract. The chosen Firm understands and agrees that it is not entitled to employee benefits, including but not limited to workers compensation and employment insurance coverage, and disability. The chosen Firm shall be solely responsible for any

applicable taxes.

p. STANDARD INSURANCE REQUIREMENTS

Contractor/ Vendor shall agree to maintain in force at all times during the contract the following minimum coverages and shall name the Town of Cheshire and Cheshire Board of Education as Additional Insureds on a primary and non-contributory basis to all policies except Workers Compensation. All policies should also include a Waiver of Subrogation. Insurance shall be written with Carriers approved in the State of Connecticut and with a minimum AM Best's Rating of "A-" VIII. In addition, all Carriers are subject to approval by the Town of Cheshire and Cheshire Board of Education.

| | | (Minimum Limits) |
|--------------------------------|---|------------------|
| General Liability | Each Occurrence | \$1,000,000 |
| | General Aggregate | \$2,000,000 |
| | Products/Completed Operations Aggregate | \$2,000,000 |
| Auto Liability | Combined Single Limit | |
| | Each Accident | \$1,000,000 |
| Umbrella (Excess Liability) | Each Occurrence | \$1,000,000 |
| | Aggregate | \$1,000,000 |

Professional Liability Insurance: \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate

If any policy is written on a "Claims Made" basis, the policy must be continually renewed for a minimum of two (2) years from the completion date of this contract. If the policy is replaced and/or the retroactive date is changed, then the expiring policy must be endorsed to extend the reporting period for claims for the policy in effect during the contract for two (2) years from the completion date.

| | | |
|--|--------------------------|-----------|
| Workers Compensation and Employers' Liability | WC Statutory Limits | |
| | EL Each Accident | \$500,000 |
| | EL Disease Each Employee | \$500,000 |
| | EL Disease Policy Limit | \$500,000 |

Original, completed Certificates of Insurance must be presented to the Town of Cheshire prior to contract issuance. Contractor/Vendor agrees to provide replacement/renewal certificates at least 60 days prior to the expiration date of the policies.

References

Each respondent shall provide a minimum of three references for projects similar in size and scope to this project. Reference listing shall include the name, title, valid telephone number and email address for each reference. Failure to provide a minimum of three references may result in rejection of the proposal.

Submission of Statements of Qualifications and Proposals

On behalf of the Town of Cheshire respondents are required to submit **four (4) hard copy of the Qualifications and Proposal along with one (1) electronic file each of the SOQ and the proposal by no later than January 17, 2024 at 2:00 p.m.** to:

Sean M. Kimball, Town Manager
Town of Cheshire
84 South Main Street, Cheshire CT 06410

An authorized person representing the legal entity of the respondent must sign the response.

Termination or Amendment

The Town reserves the rights to amend or terminate this RFQ/P, to reject any or all respondents, to request additional information, to waive any informalities or non-material deficiencies in a response, and to take any and all other action that, in the Town's sole judgment, will be in its best interests. The Town reserves the right to ask any respondent to clarify its response or to submit additional information that the Town in its sole discretion deems desirable.

In addition, the Town may, before or after statement opening and in its sole discretion, clarify, modify, amend, or terminate this RFQ/P if the Town determines it is in the Town's best interest. Any addenda will be sent directly to the respondents.

Questions and Amendments

Questions concerning the process and procedures applicable to this RFQ/P or the other requirements of this RFQ/P are to be submitted **by email by 2PM on January 9, 2024** and directed **only to:**

Richard Sitnik via email at rich.sitnik@arcadis.com.

Respondents are prohibited from contacting any other Town employee, officer or official concerning this RFQ/P. A respondent's failure to comply with this requirement may result in disqualification.

The appropriate Town representative listed above must receive any questions from respondents no later than 2:00 p.m. on January 9, 2024. That representative will confirm receipt of a respondent's questions by e-mail. The Town will answer all written questions by issuing one or more addenda, which shall be a part of this RFQ/P, containing all questions received as provided for above and decisions regarding same.

At least four (3) calendar days prior to response deadline, the Town will post any addenda on the State of Connecticut DAS website, town website, under bids and proposals. **Each respondent is responsible for checking the website to determine if the Town has issued any addenda and, if so, to complete its response in accordance with the RFQ/P as modified by the addenda.**

**ATTACHMENT A1 – FEE PROPOSAL
STRUCTURAL PEER REVIEW
FOR THE NEW NORTH END ELEMENTARY SCHOOL PROJECT**

The Town of Cheshire is requesting a lump sum fee proposal for Structural Peer Review (“SPR”) services using the attached fee proposal form. All services shall be provided in accordance with Connecticut law. Please provide this form, completed, in a **separate sealed envelope**, to the Town in accordance with the requirements of the RFQ/P.

In submitting this proposal, the undersigned declares that this proposal is made without any connection with any persons making another bid or the same contract; that the bid is in all respects fair and without collusion, fraud or mental reservation; and that no official or the Town, or any person in the employ of the Town, or any person in the employ of the Town is directly or indirectly interested in said bid or in the supplies or work to which it relates, or in any portion of the profits thereof.

The undersigned also hereby declares that he/she or they have carefully considered objectives of each element of this project, the desired end results, the environment in which services and or products are to perform and are satisfied as to all the quantities and conditions and understands that in signing this proposal all right to plead any misunderstanding regarding the same is waived.

The undersigned further understands and agrees that he/she/it will furnish and provide all the necessary material, machinery, implements, tools, labor, services, and other items of whatever nature, and to do and perform all the work necessary under the aforesaid conditions, to carry out the contract and to accept in full compensation therefore the amount of the contract as agreed to by the SPR and the Town.

1. PROPOSED FEES:

| | |
|--|----------------------------|
| A. Phase 1 Services Fee: Lump Sum, based on scope of SPR Services | |
| \$ | Fee Amount in words: |
| | |
| B. Phase 2 Services Fee: Lump Sum, based on scope of SPR Services | |
| \$ | Fee Amount in words: |
| | |
| C. Phase 3 Services Fee: Lump Sum, based on scope of SPR Services | |
| \$ | Fee Amount in words: |
| | |
| D. Reimbursable Costs: Not to exceed amount, based on scope of SPR Services | |
| \$ | NTE Amount in words: |
| | |
| <i>* Provide/ list those costs your firm considers reimbursable, on a separate sheet if necessary.</i> | |
| E. Total Fee: A+B+C+D (Include Reimbursable Costs if Any) | |
| \$ | Total Fee Amount in words: |
| | |

2. Hourly Rates and Team:

Identify the assigned project team members who will provide these services; identify their hourly rate, fixed through project completion.

| Name, Title | Rate |
|-------------|------|
| A | |
| B | |
| C | |
| D | |
| E | |
| F | |

In submitting this proposal, we agree:

- a) To hold the proposal open for ninety (90) calendar days after the actual Proposal Opening date.
- b) To accomplish the work in accordance with the Contract Documents and within the Contract Time.
- c) To execute the contract provided by the Town, without alteration or modification, within five (5) days of receipt of a notice of award from the Town.

Name of Company _____ Date _____

Address _____

Telephone _____ E-mail _____

Printed Name / Title of Authorized Agent _____

Signature of Authorized Agent _____

The above signatory acknowledges receipt of the following addenda issued during the bidding period and understands that they are a part of the bidding documents (if applicable):

| Addendum # | Dated | Addendum # | Dated |
|------------|-------|------------|-------|
| | | | |

----- END OF RFP ATTACHMENT A1 -----

**ATTACHMENT A2 – FEE PROPOSAL
STRUCTURAL PEER REVIEW
FOR THE NEW NORTH END ELEMENTARY SCHOOL PROJECT
IF AWARDED BOTH NORTON AND NORTH END**

The Town of Cheshire is requesting a lump sum fee proposal for Structural Peer Review (“SPR”) services using the attached fee proposal form. Please provide this form, completed, in a **separate sealed envelope**, to the Town in accordance with the requirements of the RFQ/P.

In submitting this proposal, the undersigned declares that this proposal is made without any connection with any persons making another bid or the same contract; that the bid is in all respects fair and without collusion, fraud or mental reservation; and that no official or the Town, or any person in the employ of the Town, or any person in the employ of the Town is directly or indirectly interested in said bid or in the supplies or work to which it relates, or in any portion of the profits thereof.

The undersigned also hereby declares that he/she or they have carefully considered objectives of each element of this project, the desired end results, the environment in which services and or products are to perform and are satisfied as to all the quantities and conditions and understands that in signing this proposal all right to plead any misunderstanding regarding the same is waived.

The undersigned further understands and agrees that he/she/it will furnish and provide all the necessary material, machinery, implements, tools, labor, services, and other items of whatever nature, and to do and perform all the work necessary under the aforesaid conditions, to carry out the contract and to accept in full compensation therefore the amount of the contract as agreed to by the SPR and the Town.

1. PROPOSED FEES:

| | |
|--|----------------------------|
| A. Phase 1 Services Fee: Lump Sum, based on scope of SPR Services | |
| \$ | Fee Amount in words: |
| | |
| B. Phase 2 Services Fee: Lump Sum, based on scope of SPR Services | |
| \$ | Fee Amount in words: |
| | |
| C. Phase 3 Services Fee: Lump Sum, based on scope of SPR Services | |
| \$ | Fee Amount in words: |
| | |
| D. Reimbursable Costs: Not to exceed amount, based on scope of SPR Services | |
| \$ | NTE Amount in words: |
| | |
| <i>* Provide/ list those costs your firm considers reimbursable, on a separate sheet if necessary.</i> | |
| E. Total Fee: A+B+C+D (Include Reimbursable Costs if Any) | |
| \$ | Total Fee Amount in words: |
| | |

2. Hourly Rates and Team:

Identify the assigned project team members who will provide these services; identify their hourly rate, fixed through project completion.

| Name, Title | Rate |
|-------------|------|
| A | |
| B | |
| C | |
| D | |
| E | |
| F | |

In submitting this proposal, we agree:

- a) To hold the proposal open for ninety (90) calendar days after the actual Proposal Opening date.
- b) To accomplish the work in accordance with the Contract Documents and within the Contract Time.
- c) To execute the contract provided by the Town, without alteration or modification, within five (5) days of receipt of a notice of award from the Town.

Name of Company _____ Date _____

Address _____

Telephone _____ E-mail _____

Printed Name / Title of Authorized Agent _____

Signature of Authorized Agent _____

The above signatory acknowledges receipt of the following addenda issued during the bidding period and understands that they are a part of the bidding documents (if applicable):

| Addendum # | Dated | Addendum # | Dated |
|------------|-------|------------|-------|
| | | | |

----- END OF RFP ATTACHMENT A2 -----

ATTACHMENT B
CONSULTING SERVICES AGREEMENT

This _____ Consulting Services Agreement (the "Agreement") is made effective as of January __, 2024 ("Effective Date") by and between the **Town of Cheshire**, a Connecticut municipality, having an address of 84 South Main Street, Cheshire, Connecticut 06410 ("Town"), and _____ a [Connecticut] corporation, having its principal offices and place of business at _____, (city/town)_____, (state)_____(zip)_____("Consultant"). Town and Consultant are sometimes referred to herein individually as a "Party" and collectively as "Parties".

The purpose of this Agreement is to set forth the terms, conditions and mutual commitments of the Parties with regard to certain hazardous building materials consulting services Consultant agrees to provide for the project known as RFQ/P#2324-____, the Norton Elementary School Project, 414 N. Brooksvale Road, Cheshire, CT 06410 ("Project"). Therefore, intending to be legally bound, the Parties agree as follows:

1. Definitions and Interpretation.

1.1 Definitions. The following capitalized terms when used in this Agreement shall have the respective meanings set forth below, unless a different meaning shall be expressly stated.

1.1.1 "Town Confidential Information" has the meaning set forth in Section 7.1.1 hereof.

1.1.2 "Town Representative" means the person(s) designated as such by Town from time to time.

1.1.3 "Consultant" has the meaning set forth in the preamble hereto.

1.1.4 "Consultant Intellectual Property" means all computer software, including source and object codes and associated documentation, as well as patents, copyrights and other intellectual property in any country covering inventions and information which was not developed by Consultant for Town pursuant to this Agreement or an Accepted Order and is owned by Consultant.

1.1.5 "Consultant Representative" means _____.

1.1.6 "Effective Date" has the meaning set forth in the preamble hereto.

1.1.7 "Final Report" means any document that is: (i) intended to stand on its own as a description of the results of Services provided by Consultant under this Agreement and any Accepted Order; and, (ii) is the final version of that document. Documents such as analytical results that are initially presented to the Town as stand-alone

documents are not considered Final Reports if and when the information contained in such documents is incorporated into a subsequent report.

1.1.8 "Force Majeure Event" has the meaning set forth in Section 8.1 hereof.

1.1.9 "Governmental Authority" includes any federal, state, or local administrative, executive, legislative, or judicial governmental authority, agency, or any political subdivision thereof, with jurisdiction over the matter at issue, including but in no way limited to the State of Connecticut Office of School Construction Grants and Review and the Connecticut Department of Energy and Environmental Protection .

1.1.10 "Hazardous Waste" means any substance or material meeting the definition of "Hazardous Waste" as described in applicable federal and state of Connecticut statutes, codes or regulations.

1.1.11 "Hazardous Substance" means "Hazardous Substance" as defined in Section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., or as defined by state of Connecticut law or regulation.

1.1.12 "Legal Requirements" means all statutes, orders, decrees, rulings, decisions, laws (including environmental laws), permits, rules, and regulations issued or enforced by any Governmental Authority, as the same may be modified and amended from time to time during the term of this Agreement.

1.1.13 "Party" and "Parties" have the meanings set forth in the preamble hereto.

1.1.14 "Permit" means, at any time, any consent, license, approval, permit or other authorization of any Governmental Authority of whatsoever nature which, at such time, is required, in accordance with applicable Legal Requirements for the performance of any aspect of the Services or for any other matters relevant for the performance by Consultant of its obligations hereunder.

1.1.15 "Project" means RFQ/P#2324-_____, the Norton Elementary School Project, 414 N. Brooksvale Road, Cheshire, CT 06410, for which the Town has applied to and been approved by the State of Connecticut Office of School Construction Grants and Review ("OSCGR") for a school construction grant pursuant to Chapter 173 of the Connecticut General Statutes.

1.1.16 "Response Work" means the performance of services related to identifying and investigating contamination or other environmental conditions at a Site, evaluating remedial options, and designing, and providing detailed engineering services precedent to the implementation of remedial measures in response to environmental conditions at a Site or preparing and providing risk assessments and/or endangerment assessments of the Site. Response Work includes services related to the performance of Remedial Investigations, Feasibility Studies, Engineering Evaluations, Cost Analyses, Remedial Design. It also includes services related to the performance of RCRA Facility

Investigations, and Corrective Measures Studies as those terms are described under the hazardous waste management program of the U.S. Environmental Protection Agency (U.S.E.P.A.).

1.1.17 "RFQ/P" means the Town's Request for Qualifications and Proposals #2324-03 for Hazardous Building Materials Consulting Services at the Project and is incorporated herein and made a part of this Agreement.

1.1.18 "Proposal" means the Consultant's proposal, dated January 17, 2024, to the Town and is incorporated herein and made a part hereof.

1.1.19 "Services" means the hazardous building materials consulting services, including the work specified in the RFQ/P and the Proposal, to be performed by the Consultant.

1.1.20 "Site" means air, surface water, soil, sediments and groundwater associated with property, including land and structures thereon, as further described in the RFQ/P and the Proposal.

1.1.21 "Subcontractor" means any corporation, firm, person or persons who is a licensee, subcontractor or Consultant of any tier supplying material, equipment, labor, goods or services of any kind whatsoever to Consultant in connection with the obligation of Consultant under this Agreement.

1.1.22 "Work Product" means all documents, information or other data generated by Consultant or its employees while rendering the Services, including but not limited to any and all source and object codes and applicable documentation, information, data, models, equations, studies, calculations, reports, drawings, flow charts, modifications and/or adaptations of existing software and inventions developed or reduced to practice by Consultant or its employees while providing the Services.

1.2 Interpretation. Unless the context plainly indicates otherwise:

1.2.1 words importing the singular number shall be deemed to include the plural number (and vice versa).

1.2.2 words importing persons shall include firms and corporations;

1.2.3 each reference to this Agreement or any other document, contract or agreement shall include a reference to each permitted variation of or supplement to this Agreement and such document, contract or agreement as amended, varied or supplemented from time to time in accordance with its terms;

1.2.4 references to any statute or statutory provisions shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation made under any such statute;

1.2.5 terms such as "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Agreement rather than any particular part of the same;

1.2.6 references to the word "include" or "including" are to be construed without limitation;

1.2.7 references to Articles, Sections and Exhibits are references to Articles, Sections and Exhibits of this Agreement;

1.2.8 any reference to a person or party includes such person's or party's successors and permitted assigns; and

1.2.9 all subject headings, Article or Section titles, and similar captions are provided for the purpose of reference and convenience, and are not intended to be inclusive, definitive or affect the meaning of the contents of the scope of this Agreement.

2. Agreement Term.

This Agreement shall begin on the Effective Date and shall continue until either the Consultant has completed the services required hereby or this Agreement is terminated by the TOWN upon written notice to the Consultant. **CONSULTANT UNDERSTANDS AND ACKNOWLEDGES THAT TIME IS OF THE ESSENCE WITH REGARD TO THE PERFORMANCE OF SERVICES FOR THE PROJECT. Consultant shall perform its services to meet the Project schedule as expeditiously as is consistent with the level of professional skill exercised by other professional consultants performing services of a similar nature under similar circumstances and care and the orderly progress of the Project.**

3. Scope of Agreement.

Scope of Services. The Services to be provided by Consultant, the performance schedule therefor, the pricing and payment terms thereof (including any discounts), the Site therefor, and the term thereof, shall be as specified and described in the RFQ/P, the Proposal and this Agreement. The only manner in which any provision of this Agreement may be modified, superseded or overwritten is by a single document signed by both TOWN and Consultant specifically identifying and referring to this Agreement and to the number and heading of the provision being modified, superseded or overwritten. Consultant shall supply any and all labor, services, materials, equipment, and items necessary or appropriate to perform the Services.

4. Operations and Performance:

4.1 Representative. The Consultant Representative for the Project shall be _____.

4.1.1 All communications, directions and instruction pertaining to the Services and the Project shall be communicated by and to the Parties' respective designated representatives.

4.1.2 The Consultant Representative and Town Representative shall represent the respective Party and all instructions given to it shall be deemed delivered to that Party.

4.1.3 Any oral communications, directions or instructions pertaining to the Services and/or the applicable Accepted Order from Consultant Representative to Town Representative or from Town Representative to Consultant Representative shall be confirmed in writing within ten (10) calendar days of the giving of the communication, direction or instruction. Consultant shall make no public comments nor media or press releases concerning the Project without the Town's advance express written consent

4.2 Town Responsibilities.

4.2.1 Town shall obtain or provide to Consultant rights of access to and egress from the Project site as may be reasonably necessary for the Consultant to perform the Services.

4.3 Consultant Personnel. The following requirements shall apply with respect to Consultant personnel performing any of the Services.

4.3.1 Consultant agrees that it will:

4.3.1.1 prior to assigning any employee of Consultant to work for Town, review employment history of such employees and upon request therefor provide such history to Town. Consultant agrees that Town may refuse any such employee and such employee shall not be assigned by Consultant to render Services;

4.3.1.2 maintain a list of employees and their employment history assigned by it to render Services to Town pursuant to this Agreement, such list and employment history to be delivered to Town upon request;

4.3.1.3 will remove from the performance of the Services any employee of Consultant as may be requested by Town, in its' discretion, and shall within five (5) business days of receipt of such notice, replace that employee with an acceptable substitute employee. If any employee assigned to perform the Services ceases to be an employee of Consultant during the term hereof, Consultant shall be obligated to provide Town with a substitute employee acceptable to Town within five (5) business days of termination of employment with Consultant.

4.3.1.4 regularly and timely communicate with the Town and its Building Committee concerning Consultant's performance of services hereunder; and

4.3.1.5 coordinate its work with the work of Owner's Representative (Arcadis), Construction Manager (O&G Industries), Architect (Tecton) and other professionals.

4.3.2 Consultant shall employ for the performance of the Services only personnel who are qualified, licensed or certified, trained and skilled in the performance of their duties and have the requisite experience and know-how to perform and complete the Services in accordance with the requirements of this Agreement, the pertinent industry-

accepted practices, legal requirements and the requirements of the OSCGR.

4.3.3 Consultant's employees performing the Services at the Site shall be carefully selected by Consultant utilizing reliable and valid test methods that meet all applicable regulations.

4.3.4 Consultant shall not change supervisory personnel assigned to specific Services without prior written approval of the applicable Town, which approval shall not be unreasonably withheld. However, if the performance of the Consultant's supervisory personnel assigned to the Services is unsatisfactory to TOWN and/or the applicable Town and remains unsatisfactory after Consultant has had notice from TOWN and/or the applicable Town and a reasonable time to correct the problem, then such supervisory personnel shall be changed by Consultant to a person who is acceptable to TOWN.

4.4 Safety. Consultant understands and acknowledges that the Site is an occupied, in-use public school.

4.4.1 Consultant shall continuously maintain adequate protection of its work and equipment from damage and shall protect the Site from injury or loss of any type whatsoever arising out of the Consultant's Services. Consultant also shall adequately protect adjacent property from loss or damage which might result, either directly or indirectly, from the activities of Consultant at the Site.

4.4.2 In all cases, the Services, including but not limited to all equipment and material used therefor, shall be in compliance and performed in accordance with all applicable Legal Requirements.

4.4.3 Consultant shall take, or cause to be taken, at its expense, all necessary precautions for the safety of Consultant's personnel engaged in the performance of the Services and shall comply with all applicable provisions of federal, state, provincial and municipal safety laws, building codes, and safety regulations to prevent accidents or injuries on, the Site. In the previous regard, Consultant shall provide its employees and Consultant's Subcontractors performing any part of the Services at the Site with such warnings, and other information as may be provided by Town regarding the products, materials and chemicals received, stored, used and produced at the Site.

4.4.4 Consultant shall develop and have in effect during its performance of the Services a health and safety program for its employees Consultant's Subcontractors, and Consultant shall provide a copy thereof, upon request, to the applicable Town. Consultant shall review and revise said program periodically, providing to the applicable Town a copy of the revised program. Consultant shall be solely responsible for the compliance of its employees or subcontractors with the Consultant's health and safety program. Though Town shall have no obligation to observe Consultant's compliance with its health and safety program, the Town may report all observed health and safety program violations to the Consultant who shall take prompt corrective action. TOWN shall not be required to make evaluation or audits of the Consultant's program or implementation thereof. Compliance with the program and access to medical care for injuries and/or illness sustained by the Consultant's employees and Consultant's Subcontractors performing any of the Services shall be at the sole cost and responsibility and in the sole control of the Consultant, and Consultant hereby waives any right to subrogation or contribution from the Town therefor.

Consultant shall maintain an accurate record of all causes of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of the Services, which records shall be made available to TOWN, upon request. Consultant shall give TOWN notice of any injuries and/or illness sustained by the Consultant's employees or those of any other party performing any part of the Services by no later than the end of the work shift during which such injury and/illness occurred or became known.

4.5 Inspection.

4.5.1 All Services, equipment, material, items and supplies furnished by Consultant in the performance of this Agreement shall be subject to inspection by and approval of Town, or its duly authorized representatives; provided, however, Town's inspection or failure to inspect at any given time shall not operate to diminish, alter, or otherwise affect Consultant's obligations hereunder.

4.5.2 Consultant shall immediately correct any services rendered in the performance of the Services should the Services fail to conform to the requirements of this Agreement. Upon notification that any Services performed fails to conform to the requirements of this Agreement, Consultant, shall, at no additional cost to Town, immediately proceed to cause the Services to be corrected and completed in conformity with the provisions of this Agreement, and shall reimburse Town for any and all costs arising directly out of or related directly to such failure, to the extent due to its negligence.

4.6 Information.

4.6.1 Unless otherwise agreed upon in writing and except for communications and documents strictly related to billing, all documents, including original documents and any copies thereof, of any nature (including but not limited to preliminary or draft reports and data) which are produced by Consultant in connection with the Services shall be either delivered to Town Representative immediately upon completion of such Services.

4.6.2 Except to the extent specifically provided for within the scope of Services set forth in the RFQ/P and the Proposal, Consultant is not responsible for determining which information, if any, generated as a result of the Services must be reported by the Town in order to comply with any Legal Requirements. Moreover, any assistance provided in this regard shall not be construed in any way as advice of counsel. Town hereby agrees to comply with any reporting requirement imposed by any Governmental Authority relative to any information provided by Consultant during the performance of Services. Consultant shall be available to assist in the preparation of licenses and permits in the name of the Town for the Services provided. Nothing in this Section 4.6.2 affects in any way Consultant's independent obligation to provide any required notice (including notice of releases to the environment), filing, permitting or licensing required by any Governmental Authority or Legal Requirements.

4.7 Warranties or Representations; Compliance.

4.7.1 Consultant represents that in its performance of this Agreement and the Services: that all the Services will be exercised in accordance with the Standard of Care in order to comply with this Agreement; the materials that may be provided as part of the Services will

be of new materials and free from defects in material and workmanship, Consultant warrants that Consultant, and each of its employees that will or are performing the Services, has all licenses, permits, consents and registrations necessary or appropriate to enter into this Agreement and to perform the Services, Consultant represents that the Services will be performed with that standard of care, skill and diligence normally provided by a professional person or entity in the performance of services similar to the Services (Consultant is hereby notified that Town will be relying on the accuracy, competence and completeness of the Services provided by Consultant as well as on Consultant's familiarity with statutory and regulatory standards and procedures which apply to any Response Work performed); and, Consultant in rendering the Services, has complied or will comply with all applicable Legal Requirements. These warranties or representations are in addition to and shall not be construed as restricting or limiting any warranties of Consultant, express or implied, which are otherwise provided herein or exist by operation of law. Consultant is solely responsible for remitting all income related taxes, including but not limited to Social Security, FICA, or equivalent types of taxes, in a timely manner, pursuant to federal, state, provincial and local tax laws for Consultant's employees. Consultant further agrees to indemnify, defend (including reasonable attorney fees) and hold harmless Town and its Board of Education, and their respective employees, elected and appointed officials and agents, from and against any claims by any taxing authority resulting from Consultant's failure to pay any tax imposed on income derived from Consultant's employees in performance of the Services.

4.7.2 Consultant represents that it has no prior agreements or arrangements which would constitute a conflict of interest with its duties for the Town as stated herein. Consultant warrants that it shall not enter into agreements or arrangements which may be considered to be a conflict of interest with its duties for Town without first disclosing the potential conflict to Town and to the extent a conflict of interest exists, receiving written permission from Town Representative to do so. Consultant further represents that it shall not accept a contract or request for any Services which may constitute a conflict of interest because of any prior agreements or arrangements between Consultant and any third party unless the potential conflict is first fully disclosed to Town and to the third party and both Town and the third party provide written waivers of the conflict.

5. Price and Payment.

5.1 Price. Town shall pay for the Services, in accordance with the Proposal, a sum not to exceed One Hundred Twenty Seven Thousand Three Hundred Forty Five Dollars (\$127,345.00), as set forth in more detail in the Proposal. The foregoing Price includes the allowances set forth in the Consultant's fee proposal and it is expressly understood that the Consultant shall not be entitled to bill for or receive payment for services unless such services are actually rendered.

5.1.1 The prices, including hourly rates and unit prices, set forth in the Proposal shall not be changed except by mutual agreement, in writing, by Town and Consultant.

5.2 Terms of Payment. Monthly invoices will be issued by the Consultant for all Services performed during the preceding thirty (30) day period on a percentage of completion basis. The Town shall pay each invoice within thirty (30) days of the date that the invoice is approved by the Town.

5.2.1 Town may set off any amount due hereunder from Town to Consultant from any amounts due to any Town from Consultant under this Agreement or any other agreement between Consultant and Town.

5.2.2 Consultant agrees, upon reasonable request, to substantiate that Consultant's billing is in conformity with the terms of this Agreement and to furnish documents verifying each charge billed to the Town on a time and material basis or to the extent required by law. Consultant agrees that all correspondence, books, accounts and other documents and information relating to the Services and prices and expenses payable hereunder for work performed on a time and material and/or reimbursable basis shall be made available to Town, and/or its authorized representatives, for inspection during normal business hours at Consultant's office.

5.2.3 Payments to Consultant may be made by check, wire transfer, or by other means mutually agreed upon by the Parties from time to time.

6. Insurance and Indemnification.

6.1 Insurance. The Consultant agrees to the insurance requirements set forth in the RFQ/P.

6.2 Indemnity. In addition to any other indemnity obligations of Consultant set forth elsewhere in this Agreement, Consultant shall indemnify, defend (excluding professional liability claims) and hold harmless Town, and their boards, commissions, committees, elected and appointed officials, paid professional advisors, agents and employees, from and against any and all costs, expenses, losses, damages, judgments, penalties, fines and liabilities that may accrue or be sustained by any Town, their directors, officers, agents or employees, arising out of a third party claim, to the extent caused by the negligent acts or omissions, or willful misconduct of Consultant, in the performance of this Agreement and the Services, except to the extent arising out of the negligence or willful misconduct of Town.

6.2.1 The indemnification obligation of this Section 6.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant under any Worker's Compensation Acts, Disability Acts or other Employee Benefit Acts, or the insurance proceeds thereof, except as described in Section 6.2.5.

6.2.2 The indemnification obligation of this Section 6.2 should be deemed modified as required to exclude that degree of indemnification required aforesaid which is expressly prohibited by applicable law, statute or regulation, if any; but to the extent the aforesaid indemnification obligation is valid and enforceable, it shall remain in effect though modified.

6.2.3 In the event that any claim, loss, cost, expense, liability, damage or injury covered by the indemnification obligations hereunder arise or are made, asserted or threatened against Town, TOWN shall have the right to withhold from any payments due or to become due to Consultant an amount sufficient to indemnify Town from and against any and all such claim, loss, cost, expense, liability, damage or injury, including reasonable legal

fees and disbursements, to the extent caused by Consultant's negligence; or TOWN, in its discretion, may require Consultant to furnish a surety bond, at Consultant's sole cost, satisfactory to TOWN guaranteeing such protection, which bond shall be furnished by Consultant within five (5) calendar days after written demand has been made therefor. Consultant may obtain release of any such withheld monies by furnishing TOWN with the aforesaid surety bond or providing some other written assurance which is satisfactory to TOWN, as determined by TOWN in its sole discretion, that Town's interests will be properly protected.

6.2.4 The indemnity obligations of Consultant hereunder shall survive the termination or expiration of this Agreement and of any applicable Accepted Order.

7. Confidentiality and Work Product.

7.1 Consultant recognizes that by reason of it performing the Services pursuant to this Agreement and the Accepted Order, Consultant will gain knowledge of and develop on behalf of Town information relating to and concerned with the past, present and future operations and plans of Town. Consultant covenants and agrees on behalf of itself and all employees and personnel under the control of Consultant to the following conditions:

7.1.1 "Town Confidential Information" means the terms of this Agreement, and documents of any character and the information contained therein, including but not limited to drawings, designs, plans, specifications, requisitions, instructions, data, manuals, electronic media, (such as computer disk, computer programs, data stored electronically), and the like: (i) provided or disclosed to Consultant by or on behalf of Town in connection with this Agreement; (ii) learned by Consultant in performing or by virtue of this Agreement; (iii) produced for or developed by or on behalf of Consultant or Town in connection with this Agreement; or, (iv) access to which is obtained by Consultant through use of a computer system utilized by Town, or a representative of Town, and any copies, printout or displays thereof, including any computer programs and data used by Town, or a representative of Town which are stored electronically and any and all security code numbers or procedures for gaining access to a computer system used by Town, or a representative of Town. Town Confidential Information disclosed in documentary or tangible form to the extent practical shall be marked to indicate its confidential nature. In the case of Town Confidential Information disclosed orally or visually, Town shall confirm in writing the fact and general nature of each disclosure within thirty (30) calendar days after it is made.

7.1.2 Town Confidential Information and any rights therein shall be and remain the property of the Town.

7.1.3 Consultant, for itself and on behalf of its officers, employees and agents, agrees: (i) to hold Town Confidential Information in strict confidence and not to disclose any part of it to others, exercising at least the same degree of care as Consultant takes in protecting its own trade secrets; (ii) not to disclose Town Confidential Information without TOWN's prior written consent to any entity or person other than Consultant's employees who require disclosure to perform the services in connection with this Agreement; (iii) not to allow any persons or entities other than such employees access to Town Confidential Information, and then only upon execution by the employee of the confidentiality agreement referenced in Section 7.1.7 below; and, (iv) not to make any use not authorized, in writing, in

advance by TOWN of Town Confidential Information. Consultant shall not be prevented, however, from using or disclosing information: (i) which is or becomes published or otherwise publicly available through no breach of this Agreement; (ii) which is already known to Consultant at the time of disclosure by Town as evidenced in writing; or, (iii) which Consultant later lawfully learns from some source other than directly or indirectly from Town. The burden of proving that information or data is not Town Confidential Information shall be with the Consultant.

7.1.4 Consultant shall not attempt to gain unauthorized access to any Town Confidential Information and in the event access is obtained, Consultant shall immediately report that fact to TOWN and to the extent possible explain the details of the procedure used to gain such access.

7.1.5 The obligations of this Section 7.1 shall continue with respect to any Town Confidential Information for a period of one hundred and twenty (120) calendar months from the date of termination of this Agreement.

7.1.6 Within thirty (30) days after termination of this Agreement or upon written request by TOWN, whichever is earliest, Consultant shall return to TOWN all Town Confidential Information (including that generated by or on behalf of Consultant which is in the possession of Consultant or its employees or Subcontractors and is in tangible form) and all copies thereof, or with TOWN's prior written approval Consultant shall destroy the same and certify in writing, such destruction to TOWN.

7.1.7 Consultant shall require the same covenants and agreements from third parties to whom Town Confidential Information is disclosed upon approval of TOWN. Consultant shall inform its employees assigned to performance of this Agreement of Consultant's obligations contained in this Section 7.1 and shall require such employees to sign agreements of confidentiality containing nondisclosure/nonuse obligations as those set forth in this Section 7.1 prior to giving them access to Town Confidential Information. Consultant shall review on an annual basis with such employees the obligations of confidentiality that each employee has to the Town.

7.2 Work Product. Work Product shall be the sole and exclusive property of Town and may be used by Town for any purpose whatsoever without Consultant's or its employee's consent and without obligation of any further compensation to Consultant or its employee and shall be delivered by Consultant or the employee to Town upon request by Town. Consultant shall not use any portion of the Work Product in any projects for any third party. Town shall indemnify, hold harmless and defend Consultant against and all claims, liabilities, losses and costs arising from Town's use of Consultant's work product on work for which Consultant is not retained.

8. Force Majeure.

8.1 The performance by either Party of any covenant or obligation on its part to be performed under this Agreement shall be excused by floods, riots, fires, accidents, wars, embargoes, acts, injunctions, or restraints of government, or any other cause preventing such performance, beyond the affected Party's reasonable control and which is not due to the affected Party's fault or negligence ("Force Majeure Event"), provided that: (i) the Party

whose performance is affected by the Force Majeure Event promptly notifies the other Party and uses reasonable efforts to mitigate adverse effects upon the other Party; and, (ii) the Party's obligation to perform shall be suspended only for the duration of the Force Majeure Event and a reasonable recovery time thereafter. In the event the Force Majeure Event continues for ten (10) consecutive calendar days, Town, at its option, may terminate this Agreement upon notice to Consultant.

9. Termination.

9.1 If Consultant institutes or has instituted against it proceedings in bankruptcy, dissolves or liquidates its business, assigns or attempts to assign its business assets for the benefit of creditors, or if a receiver shall be appointed on account of its creditors, or if a receiver shall be appointed on account of its insolvency, or if its financial condition is such that the Town, in its reasonable opinion, has concern about its ability to fully meet its obligations under this Agreement, the Town may immediately terminate this Agreement upon written notice. Further, if either Party shall default in the performance of any undertaking or obligation to be performed by it under this and if within ten (10) calendar days after written notice thereof from the other Party (specifying in such notice the thing or matter in default) it fails to cure such default, the Party serving such notice, may without prejudice to any other right or remedy, terminate this Agreement; a failure to perform by Consultant due to a strike, lockout, labor stoppage or labor troubles of any type or nature shall not excuse Consultant from performance of this Agreement, and any failure to perform as a result thereof shall be deemed a default hereunder by Consultant. Notwithstanding the foregoing, in the event Consultant in any manner fails to perform its obligations under this Agreement in a timely manner and as required by this Agreement for any reason whatsoever, including without limitation due to a strike, lockout, labor stoppage or other labor trouble, the Town immediately may suspend the Agreement, without any obligation or compensation to Consultant.

In addition, the Town may, upon five (5) days advance written notice, terminate this Agreement for the Town's convenience. In the event that the Town terminates this Agreement for its convenience, the Town's sole liability to Consultant shall be to pay for services rendered as of the date of termination. In no event shall Consultant be entitled to or claim any indirect or consequential damages.

10. Notices.

10.1 All documents, notices and communications to be given hereunder or in connection herewith shall be in writing, signed (signing may be by an electronic signature) by the Party giving or making the notice or communication and shall be deemed given when: (i) delivered in person or by messenger or (ii) sent by facsimile or electronic mail on the date of receipt of a facsimile or electronic mail, provided that the sender can and does provide evidence of successful transmission and that such day is a business day (and if it is not, then on the next succeeding business day) or (iii) three (3) business days after being deposited in the United States mail in a sealed envelope with sufficient postage affixed, registered or certified, return receipt requested, and addressed as set forth below, or to such other addresses or designee(s) as may be hereafter designated by a Party after providing written notice thereof to the other Party:

To Town: Sean M. Kimball
Town Manager
84 South Main Street
Cheshire, CT 06410

With a copy to: Jeffrey M. Donofrio, Esq.
Town Attorney
Ciulla & Donofrio, LLP
127 Washington Avenue
North Haven, CT 06473
JDONOFRIO@CD-LLP.COM

To Consultant: _____

11. Miscellaneous.

11.1 Independent Contractor. Consultant's relationship with the Town under this Agreement is that of an independent contractor. Nothing in this Agreement shall be construed as being inconsistent with that status. Consultant shall be solely responsible for its employees, subcontractors and agents and for their benefits, contributions and taxes, as applicable and shall indemnify and hold Town harmless from any and all liability arising therefrom.

11.2 Subcontracts. Consultant may not subcontract any portion of the Services without prior written approval of the Town, both in respect of that portion of the Services to be subcontracted and the proposed Subcontractor therefor. Any such approval shall not relieve Consultant of any of its duties, obligations, warranties, liabilities or responsibilities under this Agreement. Consultant shall assure the performance of all Subcontractors and furnish such information relative to Subcontractors as the Town may at any time reasonably request, including but not limited to furnishing the Town with a copy of the subcontract. Nothing contained in this Agreement shall create any contractual relationship between the Town and any Subcontractor of Consultant, but Consultant shall be fully responsible to the Town for all acts and omissions of its Subcontractors, their agents and employees, as Consultant is for the acts and omissions of all persons directly employed by Consultant. Consultant shall require its Subcontractors to be bound by the terms and conditions of this Agreement. All portions of the Services performed for Consultant by a Subcontractor shall be pursuant to an appropriate agreement between Consultant and such Subcontractor (and where appropriate between subcontractors and sub-subcontractors).

11.3 Assignment. This Agreement shall not be assigned by either Party, in whole or in part, without the prior written consent of the other (which consent shall not be unreasonably or untimely withheld), and any attempted assignment without such consent, whether by operation of law or otherwise, shall be void. If the non-assigning Party fails to respond within twenty (20) business days to a written request by the assigning Party for written consent to the assignment, the non-assigning Party will be deemed to have consented to the assignment. Subject to the foregoing, this Agreement and all Accepted Orders shall bind and inure to the benefit of the successors and assigns of the respective Parties hereto, including without limitation, any purchaser of Consultant's or Town's respective businesses or facilities as to which this Agreement and/or the Accepted Order relates.

11.4 Waiver. The failure of either Party to enforce at any time any of the provisions of this Agreement or of an Accepted Order shall in no way constitute or be construed as a waiver of that or any other provision of this Agreement or of the Accepted Order, nor in any way to affect the validity of this Agreement or of the Accepted Order or any provision thereof or the right of such Party to enforce thereafter each and every provision of this Agreement or of the Accepted Order. No waiver of any provision or breach of this Agreement or of the Accepted Order shall be deemed to be a waiver of any other provision or breach. The remedies herein reserved by the Parties shall be cumulative and additional to any other or further remedies provided in law or equity which the Parties may possess.

11.5 Remedies. Any right or remedy of either Party set forth in this Agreement shall not be exclusive, and, in addition thereto, both Parties shall have all rights and remedies under applicable law, including without limitation, equitable relief.

11.6 Governing Law. This Agreement and the relationship and rights of the Parties hereunder are made under and shall be governed by the local laws of the State of Connecticut (without giving effect to the conflict of law principles thereof).

11.7 Reformation. In the event any provision of this Agreement or of an Accepted Order is determined to be invalid, illegal or otherwise unenforceable for any reason, that provision shall be reformed to the maximum extent permitted to preserve the Parties'

original intent, failing which it shall be severed from this Agreement, with the balance of this Agreement continuing in full force and effect.

11.8 Entire Agreement. This Agreement and any Accepted Order, including all documents referenced herein and therein, contain the entire agreement of the Parties with regard to the subject matter hereof and thereof and supersedes any prior communications, commitments, representations or warranty, or contracts between the Parties relating to the subject matter hereof and thereof. No modifications of this Agreement shall be of any force or effect unless reduced to a writing which specifically references this Agreement, states an express intent to modify or amend this Agreement, and is signed by the Parties claimed to be bound thereby.

The parties have executed this Agreement as of the Effective Date.

TOWN OF CHESHIRE ("TOWN") _____ ("Consultant")

By: _____
Name (Print): _____
Title: _____
Date: _____

By: _____
Name (Print): _____
Title: _____
Date: _____

