

A G R E E M E N T

THIS AGREEMENT dated the _____ day of _____, 2022, is by and between the **CITY OF STAMFORD** (hereinafter the “City”), a municipal corporation organized and existing pursuant to the laws of the State of Connecticut with a principal place of business located at 888 Washington Boulevard, Stamford, Connecticut, and acting herein by Caroline Simmons, its duly authorized Mayor, and **RSM US LLP** (hereinafter “RSM”), a foreign (IA) limited liability partnership with a principal place of business located at 505 5th Avenue, Suite 729, Des Moines, Iowa, and acting herein by Scott Bassett, its duly authorized Partner.

W I T N E S S E T H

WHEREAS, The City issued Request for Proposals No. 863 for Professional Auditing Services on March 3, 2022 (hereinafter the “City’s RFP No. 863”);

WHEREAS, RSM submitted a proposal in response to the City’s RFP No. 863 on April 7, 2022 (hereinafter “RSM’s Proposal”); and

WHEREAS, The City has accepted RSM’s Proposal pursuant to the terms hereinafter set forth;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. INCORPORATION OF RECITALS. The above terms and conditions are contractual in nature, not merely recitals and are hereby incorporated into this Agreement;

2. CONTRACT DOCUMENTS AND SCOPE OF SERVICES. The Contract Documents consist of this Agreement and the following Exhibits that, combined, define the duties, functions, obligations, responsibilities, and tasks of the Scope of Services:

Exhibit A – The City’s RFP No. 863;

Exhibit A-1 – Addendum No. 1, dated March 25, 2022, to the City’s RFP No. 863;

Exhibit B – RSM’s Proposal;

Exhibit B-1 – RSM’s Revised Fee Proposal by Billing Entity; and

Exhibit C – RSM’s Engagement Letter (the “Arrangement Letter”);

all attached hereto and hereby made a part hereof as if fully set forth herein;

3. NO EXCLUSIVE RIGHT TO WORK. Nothing contained herein shall grant RSM an exclusive right to perform the Scope of Services. The City may enter into similar agreements with other contractors at its sole discretion on an as-needed basis;

4. COMPENSATION. RSM shall be compensated for the Scope of Services at the following fixed yearly rates, payable periodically as services incurred:

Year 1 - \$345,000.00 (332,000.00 Fees + 13,000.00 Expenses);
Year 2 - \$357,000.00 (341,000.00 Fees + 16,000.00 Expenses); and
Year 3 - \$371,000.00 (354,000.00 Fees + 17,000.00 Expenses);

all as set forth in greater detail in RSM's Revised Fee Proposal by Billing Entity. Compensation for optional extension years shall be negotiated before the extension begins and the fees quoted for any such extension shall not exceed 110% of the Year 3 Compensation;

5. TERM. The Term of this Agreement shall commence when signed below by the City's Mayor, with the delivery of all specified services to commence with the audit for the fiscal year ending June 30, 2022, and terminate three (3) year thereafter, through and including the audit for the fiscal year ending June 30, 2024. The parties may, by mutual agreement and subject to the approval of the City of Stamford Board of Finance, extend the Term of this Agreement for two (2), additional years, provided that all other terms of this Agreement, except for Compensation, remain the same. No such extension shall be for greater than one (1) year and, under no circumstances, shall the entire Term of this Agreement, including any extension years, exceed five (5) years;

6. RSM'S REPRESENTATIVE AND KEY PERSONNEL. The following representative of RSM shall be authorized to act on behalf of RSM with respect to the Scope of Services and shall have full authority to accept instructions, make decisions, communicate for and act on behalf of RSM at all times:

Scott Bassett, Partner, Audit Services

In addition to RSM's Representative, the following Key Personnel of RSM shall be assigned to, participate in and be available to the City for the Scope of Services:

Lauren Teran, Senior Director, Audit Services,
Caroline Charlton, Senior Associate, Audit Services, and
Dan Bonnette, Partner, Audit Services,

RSM's Representative shall not be replaced by RSM without fifteen (15) days prior written consent of the City;

7. REPRESENTATIONS. RSM represents that it is qualified in relation to the Scope of Services and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the Scope of Services, including any supplementary work. RSM hereby acknowledges that the City has relied upon said representations in entering into this Agreement;

8. CAPACITY/INDEPENDENT CONTRACTOR. RSM is acting as an independent contractor and is not an employee of the City. This Agreement is for services only and does not create a partnership or joint venture between RSM and the City. The City shall

not be required to pay, or make any contribution to, any social security, local, state or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other employee benefit for RSM during the Term of this Agreement. RSM shall be responsible for paying, and complying with reporting requirements for, all state, local, and federal taxes related to payments made to RSM under this Agreement;

9. INDEMNIFICATION. RSM shall indemnify, hold harmless and, at the City's option, defend the City, its officers, agents and employees, from third party claims for loss, cost, damage, liability, and/or injury to or death of a person, including the agents and employees of RSM, or loss of or damage to property, resulting directly or indirectly from RSM's grossly negligent performance pursuant to this Agreement, or by any grossly negligent omission to perform some duty imposed by law or this Agreement upon RSM, its officers, agents and employees. The foregoing indemnity shall include reasonable attorneys' fees and costs of suit, if applicable, shall not be limited by reason of any insurance coverage required pursuant to this Agreement, and shall survive the termination of this Agreement;

10. INSURANCE. RSM shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in the City of Stamford Insurance Requirements included in the City's Request for Proposals No. 863. RSM shall be solely responsible for ensuring that its agents, including contractors and subcontractors, maintain insurance coverage at levels no less than those required of RSM pursuant to this section;

11. LIMITATION OF LIABILITY. Unless otherwise provided for under the terms of this Agreement, or any of the exhibits attached hereto, RSM's sole remedy for City delays shall be an extension of time to complete the Scope of Services.

IN NO EVENT SHALL RSM OR THE CITY, OR ANY OF THEIR RESPECTIVE PARTNERS, PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, SUBSIDIARIES, CONTRACTORS, SUBCONTRACTORS, AGENTS, REPRESENTATIVES, SUCCESSORS, OR ASSIGNS (COLLECTIVELY, THE "COVERED PARTIES" AND EACH INDIVIDUALLY, A "COVERED PARTY"), BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR SIMILAR SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF THE COVERED PARTIES ARISING OUT OF, FROM, OR RELATING TO THIS AGREEMENT, OR THE REPORT ISSUED OR SERVICES PROVIDED HEREUNDER, IS LIMITED TO AN AMOUNT NOT TO EXCEED FIVE (5) TIMES THE AMOUNT OF FEES PAID BY THE CITY TO RSM UNDER THE RELEVANT ARRANGMENT LETTER ISSUED PURSUANT TO THIS AGREEMENT;

12. ASSIGNMENT. RSM and the City shall not assign or transfer any portion of the Scope of Services set forth herein without the prior written approval of the other party;

13. SUBCONTRACTING/SUBCONSULTING. Aside from those subconsultants or subcontractors disclosed in RSM's Proposal, RSM is prohibited from further subconsulting or subcontracting the Scope of Services or any part of it unless the City first approves such subconsulting or subcontracting in writing and approves, in writing, of the specific subconsultant(s) or subcontractor(s) RSM proposes to be used. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Should the City approve of a proposed subconsultant or subcontractor, RSM shall comply with the City of Stamford Code of Ordinances § 103.4;

14. REVIEW OF WORK. Upon the City's reasonable written request, RSM shall permit the City, its agents and/or employees to review all work performed pursuant to the terms of this Agreement at any stage of the work;

15. BOOKS AND RECORDS. RSM shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of this Agreement, settlement of claims, or any other matter pertaining to RSM's demand for compensation by the City for a period of not less than three (3) years from the date of the final payment for work performed pursuant to this Agreement;

16. CONTRACT EXTRAS. Pursuant to the City of Stamford Code of Ordinances, Section 23-18.4 C., all contract extras regarding this Agreement shall be governed by the City of Stamford Charter and/or Code of Ordinances. The City shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement or the Exhibits hereto, unless the provisions of the City of Stamford Charter and/or Code of Ordinances are fully complied with. The City of Stamford Charter and Code of Ordinances can be found at www.municode.com;

17. COMPLIANCE WITH CITY OF STAMFORD CODE PROVISIONS. RSM shall fully comply, to the extent applicable, with the requirements of the City of Stamford Code of Ordinances, Sections 103-1 through 103-10, regarding contractors in general. The provisions of the City of Stamford Code of Ordinances can be found at www.municode.com;

18. COMPLIANCE WITH LAWS. RSM shall be responsible for compliance with all applicable federal, state and local laws, rules, regulations, codes, orders, ordinances, charters, statutes, policies and procedures related to the Scope of Services.

19. CONFIDENTIALITY. Unless otherwise provided for by the terms and conditions of this Agreement, or the terms and conditions of any of the Exhibits attached hereto, during and after the term of this Agreement, RSM, including, without limitation, its employees, agents, servants and representatives, shall not directly or indirectly disclose or make available to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, or use or cause to be used in any manner adverse to the interest of the City, any financial, administrative or other confidential business information, except as is necessary to perform the Scope of Services or as may be require by law;

20. GIFTS. During the Term of this Agreement, including any extensions, RSM shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of the City of Stamford or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to RSM shall include its members, officers, directors, employees, and owners of more than 5% equity in RSM;

21. CODE OF ETHICS. RSM is prohibited from using its status as a contractor to the City to derive any interest(s) or benefit(s) from other individuals or organizations and RSM shall comply with the prohibitions set forth in the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances;

22. MORALS CLAUSE. Neither RSM, RSM's Representatives nor RSM's Key Personnel shall commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the community and/or the reputation and goodwill associated with the City. If either RSM, RSM's Representative or RSM's Key Personnel is accused of any act involving moral or ethical issues, dishonestly, theft or misappropriation, under any law, or any act which casts an unfavorable light upon its association with the community and/or is accused of performing or committing any act which could adversely impact RSM's events, programs, services, or reputation, the City shall have the right to terminate this Agreement upon fifteen (15) days written notice specifying the reason, within which period RSM may cure such offense. The determination of whether and to what extent the offense is cured shall be made by the City at its sole discretion;

23. TERMINATION.

- A. **TERMINATION FOR CAUSE, SANCTIONS AND PENALTIES.** If, through any cause, RSM shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if RSM shall violate any laws or any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to RSM of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished reports, documents, data, studies, photographs, or other material prepared by RSM pursuant to its performance under this Agreement shall, at the option of the City, become the City's property. RSM shall be entitled to receive just and equitable compensation for any satisfactory services completed up to the effective date of termination. RSM shall not be responsible for any claims resulting from the City's use of the documents on another project or changes made to the documents without RSM's express written permission;

The term "cause" includes, without limitation the following:

- 1) If RSM furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete;
- 2) If RSM fails to perform to the City's satisfaction any material requirement of this Agreement or is in violation of any specific provision thereof or any State or Federal law or requirement; or
- 3) If the City reasonably determines that satisfactory performance of this Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.

Should the City terminate this Agreement for cause, RSM shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of this Agreement by RSM and the City may withhold any payment to RSM for the purposes of setoff until such time as the exact amount of damages due the City from RSM is determined. Further, if applicable, the City shall have the right to:

- 1) Complete the Scope of Services, or any part thereof, either by itself or by other consultants;
- 2) Purchase the products or services that are the subject of this Agreement elsewhere;
- 3) Pursue any equitable remedy, including, but not limited to, specific performance or injunction; and/or
- 4) Disqualify RSM from bidding on, submitting proposals for, or being awarded any City contract for a period not to exceed two (2) years from the date of such termination;

B. TERMINATION FOR CONVENIENCE. The City may terminate this Agreement at any time the City determines that the purposes of the distribution of monies pursuant to this Agreement would no longer be served by the services provided. The City shall effect such termination by giving written notice of termination to RSM and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished documents and other materials as described Subsection A shall, at the option of the City, become property of the City. If this Agreement is terminated by the City as provided herein, RSM shall be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed to the effective date of termination bear to the total services of RSM pursuant to the terms of this Agreement, less payments of compensation previously made, and subject to the City's right of set off for any damages pursuant to the terms of this Agreement;

24. CLAIMS FOR DAMAGES. Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage;

25. DISPUTE RESOLUTION.

- A. EXECUTIVE MEETING. The parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement (“Claims”) through a meeting of the chief executives of each party, or their respective designees (“Executive Meeting”);

A request for an Executive Meeting shall be made by a party in writing and delivered to the other party. The request may be made concurrently with the filing of a non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless 30 days have passed after the Executive Meeting has been requested with no meeting having been held; and

The Executive Meeting shall be held in the place where the Project is located, unless another location is mutually agreed upon;

- B. MEDIATION. Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to non-binding mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation;

The request may be made concurrently with the filing of arbitration but, in such event, the non-binding mediation shall proceed in advance of arbitration, which shall be stayed pending non-binding mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings; and

The parties shall share the mediator’s fee and any filing fees equally. The non-binding mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof;

- C. **ARBITRATION.** Any Claim subject to, but not resolved by, mediation shall, upon mutual agreement of the parties, be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration;

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim;

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law; and

Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut;

- D. **PERFORMANCE DURING DISPUTE.** To the extent permissible under applicable professional standards, RSM shall continue performance under this Agreement while matters in dispute are being resolved;

26. SETOFF OF PROPERTY TAXES OWED TO THE CITY OF STAMFORD.

Pursuant to the City of Stamford Code of Ordinances Section 23-18.4.1 and Section 12-146b of the Connecticut General Statutes, as amended, the City shall have the right to set-off or withhold any payment, or portion thereof, due to RSM pursuant to this Agreement if any taxes levied by the City of Stamford against any property, both real and personal, owned by RSM are delinquent and have been so delinquent for a period of not less than one year. Any amount withheld from RSM pursuant to this section shall be applied to RSM's delinquent taxes, provided, however, that no such amount withheld shall exceed the amount of tax, plus penalty, lien fees and interest, outstanding at the time of withholding;

27. NON-APPROPRIATION. The City is a municipal corporation and, therefore, the City's obligation to make payments under this Agreement is contingent upon the appropriation by the City of Stamford Board of Representatives of funds sufficient for such purposes for each budget year in which this Agreement is in effect;

28. GOVERNING LAWS AND VENUE. The parties deem this Agreement to have been made in the City of Stamford, State of Connecticut and that it is fair and reasonable for the validity and construction of this Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its

principles of conflicts of laws. To the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Fairfield, at Stamford, only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court. The parties hereby waive any objection which they may now have or will have to the laying of venue of any claims in any forum and further irrevocably submit to such jurisdiction in any suit, action or proceeding;

29. INTERPRETATION. The following order of precedence of Contract Documents shall apply in the event of any ambiguity between the terms of this Agreement and any of the incorporated Exhibits:

- i. This Agreement;
- ii. RSM's Arrangement Letter;
- iii. RSM's Revised Fee Proposal;
- iv. RSM's Proposal;
- v. Addendum No. 1, dated March 25, 2022, to the City's RFP No. 863; and
- vi. The City's RFP No. 863;

30. NON-WAIVER. The failure of either party to insist upon strict performance of any of the terms, conditions or covenants herein shall not be deemed a waiver of any rights or remedies that party may have; and shall not be deemed a waiver of any subsequent breach or default of the terms, conditions or covenants herein contained. The parties reserve the right to require strict compliance therewith at any time, with or without notice, except as may be otherwise required herein; and

31. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one Agreement. Any signature on a copy of this Agreement or any document necessary or convenient thereto sent by facsimile, PDF or other electronic format shall be binding upon such transmission and the facsimile, PDF or other electronic format copy shall be deemed an original for the purposes of this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written. Signed, sealed and delivered in the presence of:

CITY OF STAMFORD

Print:
Witness

By: _____
Caroline Simmons, Mayor

Date: _____

Print:
Witness

RSM US LLP




Print: Mark Griffith
Witness

By: 

Scott Bassett, Partner

Date: 8/10/2022



Print: LUANNE LUNDAQUIST
Witness

Approved as to Form:



Chris Dellaselva
Asst. Corp. Counsel

Date: Aug. 10, 2022

Approved as to Insurance:

David Villalva
Risk Manager

Date: _____