

AGREEMENT

THIS AGREEMENT dated the day of , 2023, 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 **NORTHEAST SERIES OF LOCKTON COMPANIES, LLC** (hereinafter the “Consultant”), a foreign (MO) limited liability company with a principal place of business located at 444 W 47th Street, Suite 900, Kansas City, Missouri, and a local place of business located at 76 Batterson Park Road, Farmington, Connecticut, and acting herein by William Humphrey III, its duly authorized Secretary of the Manager.

WITNESSETH

WHEREAS, The City issued Request for Proposals No. 884 for Health Care Advisory Consultant on August 25, 2022 (hereinafter the “City’s RFP No. 884”);

WHEREAS, The Consultant submitted a proposal in response to the City’s RFP No. 884 on September 15, 2022 (hereinafter the “Consultant’s Proposal”); and

WHEREAS, The City has accepted the Consultant’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. 884;

Exhibit A-1 – Addendum No. 1, dated September 6, 2022, to the City’s RFP No. 884; and

Exhibit B – The Consultant’s Proposal;

Exhibit C – Business Associate Addendum (HIPPA); and

Exhibit D – Consultant’s Compensation Disclosure Statement;

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 the Consultant an exclusive right to perform the Scope of Services. The City may enter into similar agreements with other consultants at its sole discretion on an as-needed basis;

4. **COMPENSATION.** The Consultant shall be compensated for the Scope of Services as follows:

Year One - \$125,000.00;
Year Two - \$125,000.00; and
Year Three - \$125,000.00.

Fees for possible extension years (years Four and Five) will be negotiated by the parties six (6) months prior to the end of the then-current year. All fees will be renegotiated if the City leaves the State Partnership Plan;

5. **DISCLOSURE.** In addition to the compensation set forth above, the City acknowledges, consents and agrees that Consultant may also receive other forms of incentive compensation such as contingency payments, bonuses, overrides, prizes/awards and/or supplemental commissions or other commission-like payments from insurance companies, intermediaries (which may be affiliated with Consultant) or other third parties as a result of being the City's insurance broker (collectively, "Additional Compensation"). Exhibit D, receipt of which is hereby acknowledged, sets forth a disclosure of actual or estimated commissions and/or Additional Compensation, if any, Consultant may or will receive on account of its services provided to you or on your behalf.

6. **ADDITIONAL CONNECTICUT DISCLOSURE.** Pursuant to Connecticut Public Act No. 05-61, the City acknowledges that although the amount of such Additional Compensation which may be paid to Consultant is not known or reasonably estimable, the method(s) used for determining the amount(s) of such Additional Compensation, if any, is (are) as described in Exhibit D attached hereto, receipt of which is hereby acknowledged.

7. **AGREEMENT TO FORGO RECEIPT OF COMMISSIONS.** In consideration of the City's agreement to pay the fee set forth in Section 4 above, Consultant agrees that it will seek to make all placements referenced in Exhibit D on a net of commission basis. In the event an insurance company cannot or will not comply with this request, or the City and Consultant subsequently mutually agree it is not in the City's best interest, any such commissions will be disclosed to the City and returned to the insurance company with the request that the insurance company either credit the commission amount towards the City's premium obligation or return it directly to the City to the extent permitted by applicable law. If any insurance company refuses to credit or return commissions to the City, Consultant will return the commissions directly to the City to the extent permitted by applicable law or, to the extent returning the commissions to the City is not permitted by applicable law, disclose to the City the amount of the commissions. the City acknowledges and agrees that any contemplated premium credit request or return of commission to an insurance company or the City will be done to accomplish and maintain the total agreed-upon compensation to Consultant and is not an inducement to purchase or renew coverage through Consultant.

8. **TERM.** The Term of this Agreement shall commence when signed below by the City's Mayor and terminate three (3) years thereafter. The parties may, by mutual agreement, extend the Term of this Agreement for two (2), additional years provided that all other terms of this Agreement 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;

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

Debra Testa, CIC, SVP, Public Sector Practice Leader.

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

Lisa Daley, AVP, Account Executive.

Neither the Consultant's Representative nor the Key Personnel shall be replaced by the Consultant without fifteen (15) days prior written consent of the City;

10. **REPRESENTATIONS.** The Consultant 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. The Consultant hereby acknowledges that the City has relied upon said representations in entering into this Agreement;

11. **CAPACITY/INDEPENDENT CONTRACTOR.** The Consultant 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 the Consultant 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 the Consultant during the Term of this Agreement. The Consultant shall be responsible for paying, and complying with reporting requirements for, all state, local, and federal taxes related to payments made to the Consultant under this Agreement;

12. **INDEMNIFICATION.** The Consultant 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 the Consultant, or loss of or damage to property, resulting directly or indirectly from the Consultant's negligent performance pursuant to this Agreement, or by any negligent omission to perform some duty imposed by law or this Agreement upon the Consultant, 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; the City shall indemnify, hold harmless the Consultant and 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 the City, or loss of or damage to property, resulting directly or indirectly from the City's (i) material breach of any of its obligations under this Agreement, (ii) any willful or negligent conduct of the City pursuant to this Agreement, or (iii) by any omission to perform some duty imposed by law or this Agreement upon the City, its officers, agents and employees.

13. **INSURANCE.** The Consultant 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. 884. The Consultant shall be solely responsible for ensuring that its agents, including contractors and subcontractors, maintain insurance coverage at levels no less than those required of the Consultant pursuant to this section;

14. MODELING AND ANALYTICS SERVICES. Consultant provides various modeling and/or data analytics services to the City ("Modeling and Analytics Services") and may provide such services to the City. The City authorizes Consultant 1) to disclose information it receives from the City, its insurers and/or third-party administrators to Consultant's affiliates, parents, employees, and/or to third parties as necessary to perform such Modeling and Analytics Services, and 2) to contribute such information to benchmarking databases created by or for Consultant to facilitate the creation of analytic reports for the City, provided that such reports shall not include any information that personally identifies City or its employees. Modeling and Analytics Services will be based upon a number of assumptions, conditions and factors, as well as information provided by third parties. If any such information provided to or utilized by Consultant is inaccurate, incomplete or should change, the Modeling and Analytics Services provided by Consultant could be materially affected. As Modeling and Analytics Services are subject to inherent uncertainty and involve variables beyond Consultant's control, actual results may differ materially from Consultant's projections. The parties agree that Consultant shall have no liability to the City if 1) Consultant is provided inaccurate or incomplete information, or 2) actual results differ from Consultant's projections. Modeling and Analytics Services do not constitute, and are not intended to be a substitute for, independent actuarial, accounting or tax advice.

15. LIMITATION OF LIABILITY. IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND LOST BUSINESS), ARISING OUT OF OR RELATED TO THESE TERMS OF BUSINESS, EVEN IF IT HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHER LEGAL THEORY. IN ANY EVENT, THE LIABILITY OF ONE PARTY TO THE OTHER FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO TEN MILLION DOLLARS (\$10,000,000.00) ON A YEARLY AGGREGATE BASIS. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY CONTAINED HEREIN SHALL NOT APPLY TO: 1) ANY DAMAGES AWARDED IN CONJUNCTION WITH A FINAL JUDICIAL DETERMINATION OF FRAUD OR GROSS NEGLIGENCE OR 2) PERSONAL INJURY, INCLUDING DEATH, OR DAMAGE TO TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENT, WILLFUL OR INTENTIONAL ACTS OF A PARTY OR ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS. REFERENCES TO A PARTY HEREIN INCLUDE SUCH PARTY'S DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, AGENTS AND DOMESTIC AND INTERNATIONAL AFFILIATED ENTITIES.

16. ASSIGNMENT. The Consultant shall not assign or transfer any portion of the Scope of Services set forth herein without the prior written approval of the City;

17. **SUBCONTRACTING/SUBCONSULTING.** Aside from those subconsultants or subcontractors disclosed in the Consultant's Proposal, the Consultant 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) the Consultant 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, the Consultant shall comply with the City of Stamford Code of Ordinances § 103.4;

18. **REVIEW OF WORK.** The Consultant shall permit the City, its agents and/or employees to review, at any time, all work performed pursuant to the terms of this Agreement at any stage of the work;

19. **BOOKS AND RECORDS.** The Consultant 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 the Consultant'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;

20. **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, 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;

21. **COMPLIANCE WITH CITY OF STAMFORD CODE PROVISIONS.** The Consultant 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 consultants in general. The provisions of the City of Stamford Code of Ordinances can be found at www.municode.com;

22. **COMPLIANCE WITH LAWS.** The Consultant 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.

23. **CONFIDENTIALITY.** During and after the term of this Agreement, the Consultant, 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; Consultant and City acknowledge that the nature of Consultant's services provided to the City may result in either party (the "Disclosing Party") disclosing to the other party (the "Receiving Party") certain of Disclosing Party's information ("Information"), some of which may be of a confidential or proprietary nature. For purposes of this Agreement, Information shall mean any and all nonpublic information provided to the Receiving Party, which may include the Disclosing Party's product, marketing,

pricing or financial strategies; customer information; employee information; proprietary business processes or technologies; financial information and/or trade secrets.

- A. **Exclusions.** Information shall not include any information that: 1) is or becomes publicly known and generally available in the public domain through no wrongful action or disclosure by the Receiving Party; 2) becomes known by the Receiving Party without any obligation to hold such information in confidence; 3) is received from a third party without similar restrictions known to the Receiving Party; 4) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Information; or 5) The Receiving Party is required by law, regulation, summons, subpoena or similar judicial, regulatory or administrative order or proceeding to disclose, but only to the extent and for the purpose of such required disclosure, provided the Receiving Party, unless prohibited by law, gives the Disclosing Party prompt written notice of such required disclosure to enable the Disclosing Party to pursue protective measures.
- B. **Receiving Party's Confidentiality Duties.** In consideration of the Disclosing Party's disclosure of Information to the Receiving Party, the Receiving Party hereby agrees as follows:
1. The Receiving Party shall take all reasonable steps to protect the confidentiality of the Information and shall not use the Information for any purpose other than the advancement of the services contemplated herein.
 2. The Receiving Party shall not, without the prior written approval of the Disclosing Party, publish or disclose to others any of the Information, except that City expressly authorizes Consultant to disclose City's Information to underwriters, insurers, insurance-related intermediaries and/or other third parties as necessary for the purpose of providing the services contemplated herein.
 3. The Parties acknowledge that any unauthorized disclosure or use of the Information in violation of this Agreement by a Receiving Party may cause the Disclosing Party irreparable harm, and that money damages alone, the amount of which might be difficult to ascertain, might be an inadequate remedy and, therefore, agree that the Disclosing Party shall have the right to seek injunctive relief in addition to any other remedies otherwise available to the Disclosing Party at law or in equity.
 4. At the Disclosing Party's written request, the Receiving Party shall return to the Disclosing Party any and all records or documents constituting the Information, except that the Receiving Party shall be permitted to retain an archival copy of the Information pursuant to its record retention and regulatory and legal compliance requirements. If return of the Information is not feasible, the Receiving Party shall maintain the Information pursuant to the terms and conditions of this Agreement.

24. **GIFTS.** During the Term of this Agreement, including any extensions, the Consultant 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 the Consultant shall include its members, officers, directors, employees, and owners of more than 5% equity in the Consultant;

25. **USE OF INTERMEDIARIES.** When in Consultant's professional judgment it is necessary or appropriate, Consultant may utilize the services of intermediaries or other appropriate outside vendors to assist in the servicing and marketing of City's employee benefit programs. However, this may only be done after consultation with and prior approval by City. Such intermediaries may or may not be affiliates of Consultant. Consultant will advise City whether any such intermediary is an affiliate of Consultant. Under all circumstances, any and all compensation earned by any intermediary or outside vendor shall be in addition to the compensation paid to Consultant as described herein.

26. **ACCURACY AND COMPLETENESS OF INFORMATION.** The City shall be solely responsible for the accuracy and completeness of all information furnished to Consultant and/or to underwriters, insurers, insurance-related intermediaries and/or other third parties as necessary for the services contemplated herein. Consultant shall not be responsible for independently verifying the accuracy or completeness of any information that the City provides, and Consultant shall be entitled to rely on such information. Consultant shall have no liability for any errors or omissions in any services provided to the City, including the placement of insurance on the City's behalf, that are the result of, arise from, or are based on inaccurate or incomplete information provided to Consultant. The City understands that the failure to provide accurate and complete information to an insurer, whether intentional or by error, could result in the denial of claims or rescission of coverage altogether. The City will review all policy documents provided to the City by Consultant and shall inform Consultant of any inaccuracies, deficiencies or discrepancies contained therein.

27. **USE OF A PARTICULAR INSURER.** Consultant is not obligated to utilize any particular insurer. In addition, Consultant is not authorized to make binding commitments on behalf of any insurer, except under certain circumstances which Consultant shall endeavor to make known to the City. Consultant shall not be responsible for the solvency of any insurer or its ability or willingness to pay claims, return premiums or other financial obligations. Consultant does not guarantee or make any representation or warranty that insurance can be placed on terms acceptable to the City. Consultant will not take any action to replace the City's insurers unless the City instructs Consultant to do so. The Consultant shall use a competitive process to select and recommend the City's insurers, auditors, third party administrators (TPAs), etc., and will incorporate the City's insurance requirements in that process.

28. **NO RELIANCE.** Any reports or advice provided by Consultant should not be relied upon as accounting, legal, actuarial or tax advice. In all instances, Consultant recommends that the City seek independent advice on such matters from professional accounting, legal, actuarial and tax advisors.

29. **RESPONSIBILITY FOR INSURANCE PROGRAMS.** Consultant will not be responsible for the adequacy or effectiveness of any insurance programs or policies implemented

or placed by another broker, including, without limitation, any acts or omissions occurring prior or subsequent to Consultant's engagement.

30. RELATIONSHIP BETWEEN THE PARTIES. The City acknowledges and agrees that in no event shall Consultant owe any enhanced or special duties to the City, express or implied, in fact or by law, whether referred to as a special relationship or fiduciary relationship or otherwise, except to the extent required by applicable law.

31. CODE OF ETHICS. The Consultant is prohibited from using its status as a consultant to the City to derive any interest(s) or benefit(s) from other individuals or organizations and the Consultant 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;

32. MORALS CLAUSE. Neither the Consultant, the Consultant's Representatives nor the Consultant'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 the Consultant, the Consultant's Representative or the Consultant'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 the Consultant'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 the Consultant 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;

33. HIPAA COMPLIANCE. The Consultant and the City recognize that the Consultant may be subject to the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations set forth thereunder at 45 C.F.R. Part 160 and Part 164 (the HIPAA Privacy Regulations) because the Consultant provides certain services to the City pursuant to this Agreement, which sometimes may involve (i) the use and disclosure of Protected Health Information (as defined in the HIPAA Privacy Regulations) by the Consultant, and (ii) the disclosure of Protected Health Information by or on behalf of the City to the Consultant. Accordingly, pursuant to the HIPAA Privacy Regulations, the Consultant may be a Business Associate and the City may be a Covered Entity (as those terms are defined in the HIPAA Privacy Regulations). The Consultant and the City therefore agree to comply with all of the requirements of HIPAA and the HIPAA Privacy Regulations applicable to Business Associates and Covered Entities including, but not limited to, those requirements set forth in the Business Associate Addendum (HIPAA) to this Agreement;

34. TERMINATION.

- A. **TERMINATION FOR CAUSE, SANCTIONS AND PENALTIES.** If, through any cause, the Consultant shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Consultant 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 the Consultant of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished reports, documents, data, studies, photographs, or other material prepared by the Consultant pursuant to its performance under this Agreement shall, at the option of the City, become the City's property. The Consultant shall be entitled to receive just and equitable compensation for any satisfactory services completed up to the effective date of termination. The Consultant 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 the Consultant's express written permission;

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

- 1) If the Consultant furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete;
- 2) If the Consultant 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, the Consultant 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 the Consultant and the City may withhold any payment to the Consultant for the purposes of setoff until such time as the exact amount of damages due the City from the Consultant is determined.

- 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 the Consultant and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished 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, the Consultant 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 the Consultant 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;

35. **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;

36. **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 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, mediation shall proceed in advance of arbitration, which shall be stayed pending 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 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, in the sole discretion of the City, 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.** Unless otherwise directed by the City, the Consultant shall continue performance under this Agreement while matters in dispute are being resolved;

37. 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 12146b of the Connecticut General Statutes, as amended, the City shall have the right to setoff or withhold any payment, or portion thereof, due to the Consultant pursuant to this Agreement if any taxes levied by the City of Stamford against any property, both real and personal, owned by the Consultant are delinquent and have been so delinquent for a period of not less than one year. Any amount withheld from the Consultant pursuant to this section shall be applied to the Consultant'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;

38. 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;

39. 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;

40. INTERPRETATION. The City, in its sole discretion, shall determine the terms and/or document(s) which shall prevail and take precedence in the event of any ambiguity between the terms of this Agreement and any of the incorporated Exhibits;

41. **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

42. **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. Paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

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

By: _____
Print: Caroline Simmons, Mayor
Date: _____

Witness: _____
Print: _____
Date: _____

NORTHEAST SERIES OF LOCKTON COMPANIES, LLC

By: William Humphrey III
Print: William Humphrey III, Secretary
Date: May 16, 2023

Witness: Jess Richards
Print: Jess Richards
Date: May 16, 2023

Approved as to Form:
Chris Dellaselva
Asst. Corp. Counsel
Date: _____

Approved as to Insurance:
David Villalva
Risk Manager
Date: _____