

Affordable Housing Trust
Thursday, October 24, 2019 – 2:00 PM
Donn B. Griffin Room, Harwich Town Hall
732 Main Street, Harwich
AGENDA

**As required by Open Meeting Law, you are hereby informed that the Town will video and audio taping as well as live broadcasting this public meeting. In addition, anyone who plans to video or audio tape this meeting must notify the Chairman, prior to the meeting.*

- I. Call to Order**
- II. Public Meeting**
 - a. Public Comment & Announcements
 - b. Approval of Minutes – September 12, 2019
 - c. Presentation on Harwich Rental Assistance Program by John Stewart, Executive Director of Harwich Housing Authority
 - i. Potential vote to approve letter of support for the Harwich Housing Authority’s request for Community Preservation Act funds in the amount of \$200,000 to continue the Rental Assistance Program
 - d. Discussion and presentation with Peter Donovan of Peter Donovan Development on Chloe’s Path site
 - e. Discussion with the Affordable Housing Committee Chair, Art Bodin and request to have a joint meeting with the Trust
 - f. Discussion and presentation on the role of the Chair of the Affordable Housing Trust
 - g. Update and discussion on 6 Gomes Way on new deed rider
 - h. Update on Affordable Housing Trust land inventory
 - i. Sisson Road
 - ii. Deacon’s Folly
 - iii. Oak Street – discussion on Bohler Engineering Proposal and possible vote
 - i. Housing Coordinator Report – presented by Andrea Aldana & Pelinda Deegan
 - i. Affordable Housing Trust Funds Report
 1. Community Preservation Act funds
 2. Cell tower funds
 3. Balance report
 - ii. Update on Action Plan
 1. RFP
 - iii. Harwich Housing Facebook – View draft of Pine Oaks Video
 - iv. September Monthly Report
- III. Other Business**
- IV. Next Meeting Date**
- V. Adjournment**

** Per the Attorney General’s Office: The Board of Selectman may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following “New Business.” If you are deaf or hard of hearing or a person with a disability who requires an accommodation, contact the Selectmen’s Office at 508-430- 7513.*

Authorized Posting Officer: Charleen Greenhalgh

Posted by: _____

Date: Oct. 18, 2019

Affordable Housing Trust
Thursday, September 12th, 2019 – 2:00 PM
Donn B. Griffin Room, Harwich Town Hall
732 Main Street, Harwich

MINUTES

MEMBERS PRESENT: Chair, Christopher Clark, Vice Chair, Don Howell, Brendan Lowney, Larry Brophy

MEMBERS NOT PRESENT: Judith Underwood

OTHERS PRESENT: Director of Housing Advocacy for Community Development Partnership, Andrea Aldana, Housing Advocacy Program Manager Community Development Partnership, Pelinda Deegan, Town Planner, Charleen Greenhalgh, Jay Coburn, Chief Executive Officer, Community Development Partnership (CDP), Kathy Green, Real Estate Open Space (REOS) Committee, Elaine Shovlin, REOS, Art Bodin, Chair of Affordable Housing Committee, Greg Winston, President of Mid Cape Church Homes

Meeting was called to order at 2:05 PM by Mr. Clark.

Public Comment & Announcements:

Mr. Coburn presented on Community Development Partnership' work in affordable housing and other programs.

Mr. Clark acknowledged and thanked Mid Cape Church homes for inviting the Trust to attend Pine Oaks Village luncheon.

Approval of Minutes:

August 15, 2019 – Mr. Clark requested that moving forward, the minutes on votes note which members are voting in favor and not in favor.

Mr. Howell motions to approve the minutes as written and Mr. Brophy seconds the motion, unanimous vote.

Review and approve Community Preservation Act application:

Ms. Greenhalgh provided information on two Community Preservation Act (CPA) applications. The first is a general application for \$550,000. She explained that \$50,000 will cover the \$30,000 CDP contract at 10 hours per week and add on projects such as public forums, community engagement and other projects. She was uncertain on the percentage of the Community Housing portion of the CPA but to keep the amount stagnant, the request is \$500,000. Mr. Howell pointed out what the \$30,000 CDP contract entailed from 2018 and the scope of work for the \$30,000 CDP contract this year. Mr. Clark continued to detail the Housing Coordinator scope of work; from attending other committee meetings to being involved with pre-development work. Ms. Aldana requested to have an expectation or an idea of what the added hours would entail in advance.

Mr. Brophy made a motion to authorize the CPA general application in the amount of \$550,000, seconded by Mr. Howell, unanimous vote.

Ms. Greenhalgh stated the second CPA application involving Deacon's Folly property which is a joint application between the Trust and Real Estate Open Space (REOS) committee for the amount of \$1.2 million which is the current asking price. Ms. Greenhalgh pointed out that if the asking price was confirmed to be another amount, the application can be revised to reflect the appraisal amount. Mr. Howell added that it was successful collaboration between REOS, the Trust and the Conservation Trust.

Ms. Green approached the podium and recommended the Trust meet in executive session due to the asking price, as there is room for negotiation. Mr. Howell stated that the site was already identified during a Board of Selectmen executive session and expected further negotiation. Ms. Greenhalgh indicated that she is planning to present and get support from the Affordable Housing Committee as well as the Board of Selectmen.

Mr. Howell made a motion to support the Deacon's Folly request as subject to a final figure from the appraisal with the authorization for the Chairman, Mr. Clark to sign, Mr. Brophy seconded, unanimous vote.

Discussion and vote on new priority list

Ms. Aldana presented a priority matrix which provides an update with sites the Trust is considering for affordable housing development. It is a summary of strategies with each parcel and explains pre-development activities for Oak Street and Sisson Road. One new update related to Oak Street was the Bohler Engineering proposal for pre-development work to discuss at the next meeting. Mr. Howell mentioned that prior to pursuing Habitat for Humanity to develop one unit, he questioned the possibility of maximizing the development, such as 3 or 4 quads. Mr. Clark pointed out that the Trust needs to decide on committing on spending money to see what possibilities can be done to the site for engineering. Ms. Aldana provided an update on Sisson Road stating that Laura Shufelt from Massachusetts Housing Partnership will present at the October meeting provided there are updates. The Trust discussed other sites not on the priority list. Mr. Brophy expressed his concern for Earle Road property and his belief that the property was designated as general municipal use. Mr. Clark indicated that there is a preliminary write up from an attorney. Mr. Howell and Mr. Brophy had a discussion on the possibility of selling property under their jurisdiction. The Trust explored the possibility in having two priority lists involving Willow Street and Earle Road with the expectation of adding to town owned property and privately owned lists.

Mr. Clark provided information on a private developer's interest in partnering with the Trust involving Chloe's Path and Wise Living. Mr. Howell confirmed that nothing is finalized with the aforementioned sites. A discussion ensued on prioritization of three sites for a priority list as follows: (1) Deacon's Folly, (2) Wise Living and (3) Chloe's Path or to only list Deacon's Folly as (1) with potential to modify the list.

Mr. Brophy made a motion to list Deacon's Folly as (1) on the priority list with ability to revise the list. Mr. Brophy seconded, unanimous vote.

Update on Habitat for Humanity resale opportunity, presented by Chris Clark

Mr. Clark referred to Mr. Howell to provide information on the right of refusal on the Habitat for Humanity resale opportunity which was discussed and voted on at the Board of Selectmen meeting.

Housing Coordinator Report

Mr. Clark did not have the Trust Fund balance report and will provide the information at the October meeting. Mr. Clark explained the CPC balances and funding buckets. Mr. Clark indicated that the Finance Director, Carol Coppola is waiting for the state designation to be identified and is waiting for the Department of Revenue to certify prior to the determination of the availability of funding. Mr. Howell explained that there are funds not allocated and under the jurisdiction of the Trust.

Ms. Aldana stated the status for the Action Plan solicitation that was sent to 7 individuals. Due to an emergency situation, it is uncertain whether responses were received.

Ms. Deegan provided an update with the Trusts' Facebook Page and provided an overview of posting guidelines and current online engagements. There was a discussion on the resident interviews conducted at the Pine Oaks Village luncheon. Mr. Howell expressed the importance of telling the stories of Harwich residents.

Mr. Clark discussed the idea of having Trust members having a town email and business cards. He indicated that he will approach Foster Banford, Information Technology.

There was a discussion on a resource Ms. Aldana provided on Guidance in Considering Housing Development which lists 9 items to considering when developing affordable housing. This list is from Massachusetts Housing Partnership.

Other Business:

Ms. Aldana provided information on the upcoming Lower Cape Housing Institute by Community Development Partnership. She provided a flyer and provided information on how to register.

Mr. Greg Winston, President of Mid Cape Church Homes approached the podium and expressed interest and benefits in partnering with the Trust for the development of Pine Oaks Phase IV.

Mr. Bodin approached the podium and referred to the Guidance in Considering Housing Development in which it may be too restrictive. Mr. Greenhalgh pointed out the document indicated that not meeting the entire list is not a deal breaker. Mr. Bodin also commented on the importance of boards and committees educating themselves on Chapter 40B. Mr. Howell agreed in that training is very important.

Elaine Shovlin approached the podium to ask a question on what is the mechanism for selling town owned property and where is the money allocated? Mr. Howell and Mr. Clark explained that the Trust has the authority to buy and sell.

Next Meeting Date: October 24, 2019 at 2 pm.

Mr. Brophy moved to adjourn and Mr. Howell seconded the motion to adjourn, approved unanimously.

Meeting adjourned at 3:14 pm.

Respectfully Submitted,

Pelinda Deegan



community development partnership

September 2019 Monthly Report Town of Harwich

1. Office Hours

- a. Held weekly office hours on Thursdays, 8:30 am – 4:00 pm: September 5th, September 12th, September 19th and September 26th.
 - Standing meeting with Chris Clark, Don Howell and Charleen Greenhalgh on Thursdays at 9am.
 - 10/7/19: Completed September monthly report.

2. Provide support to Town housing-related committees as directed by Town Administration

- a. Provide staff support to Affordable Housing Trust (AHT)
 - 9/1/19: Submitted agenda, agenda packet and minutes. Held meeting with Trust member, Larry Brophy. Completed updates of the Land Inventory Tracker. Administrative work and correspondence with the following: Melanie Bach, Residential Coordinator at Pine Oaks Village, Caleb LaDue, IT Specialist, and Brendan Lowney, AHT member in regards to the video project.
 - 9/12/19: Attended Pine Oaks luncheon with AHT. Conducted six one-on-one resident interviews. Attended and staffed AHT meeting. Submitted Facebook post. Contacted Foster Banford, Town of Harwich IT Director, in regards to AHT member email and business cards.
 - 9/19/19: Held a meeting with Caleb Ladue, IT Specialist. to discuss Facebook video project involving Pine Oaks resident. Attended and staffed AHT meeting. Submitted post for AHT Facebook.
 - 9/26/19: Drafted agenda for the October 24th meeting. Began draft of minutes.
- b. Pre-development tasks
 - 9/1/19: Ongoing correspondence with Laura Shufelt, Massachusetts Housing Partnership, for Oak Street and Sisson Road updates.
 - 9/11/19: Ongoing discussion and correspondence with Zackary Richards, Project Manager at Bohler Engineering, regarding proposal for Oak Street.

3. Monitor existing units on Town's Subsidized Housing Inventory (SHI)

- 9/26/19: Drafted Community Housing Sheet.

4. Building relationships and gathering information

- 9/8/19: Phone meeting with Al Eaton at Mid Cape Church Homes to introduce him to George Connelly, VP Business Development at Williams Building Co. Held one-on-one meeting with Mark Kelleher to discuss housing programs.
- 9/12/19: Held meeting with Art Bodin, Chair of Affordable Housing Committee. He requested to have a Housing Coordinator update at his next meeting.
- 9/15/19: Presented at the Affordable Housing Committee to provide Housing Coordinator update.

5. Community Outreach & Response

- 9/26/19: Held phone meeting with Beth Wade, Land Acquisition Manager at Habitat for Humanity, to discuss AHT meeting on October 24th.



PROPOSAL

October 8, 2019
Via Electronic

Harwich Affordable Housing Trust
732 Main Street
Harwich Center, MA 02645

Attention: Christopher Clark, Chair Member

**RE: Professional Survey Services
Harwich Site
0 Oak Street
Lots -61/B1-A and 61/B1-B
Harwich, Massachusetts**

Dear Mr. Clark:

Thank you for this opportunity to present our Proposal for Professional Survey Services to be rendered in connection with the above referenced project. As we understand at this time, you are considering this property for a future residential development and want to better understand the potential development viability of the parcel.

In preparation of this Proposal, our office is currently in receipt of your email with subject "Predevelopment – Town of Harwich" dated September 11, 2019. For the purpose of this proposal we assume the information presented to be accurate, and this has been utilized as a basis for our scope of services.

At this time, our office, through our survey sub-consultant, will prepare a boundary, topographical and utility survey for this site, reflective of information required for due diligence and conceptual planning efforts. This survey will be available digitally in AutoCAD format.

Our office's obligation as defined within this Proposal will be to provide survey and wetland delineation services to help enable you to quantify the site's full potential as a residential redevelopment. For clarity, we have delineated our firm's services more specifically as outlined in the following phases:

PHASE 100 – Boundary, Topographic & Utility Survey

This section will include our subconsultant, Control Point Associates, obtaining owner's names, tax maps, deeds, filed maps and available utility and highway plans. Upon review of same, Control Point will then conduct a perimeter field survey, which will include the location of property corner evidence along the subject and adjacent property lines. This information will be collectively analyzed to form the boundary survey for the subject parcel. Additionally, topography and visible utility information will be obtained throughout the site as shown on the Exhibit "A". Topography will be obtained at an approximate fifty (50) foot interval to generate contours at every one (1) foot, with the datum for the topography being based upon NAVD 1988. Control Point Associates, Inc. will set two temporary vertical benchmarks on site. Utility information will be based upon utility company mapping and markouts, visible surface features and information provided by your office. Furthermore, this section will include the location of drainage structures and sanitary sewers within the above-mentioned survey area with rim and grate elevations, inverts, pipe sizes and flow directions. This information will be collectively compiled into an appropriately scaled AutoCAD Civil 3D 2018 drawing document.

PHASE 102 – Wetland Delineation and Sketch

Bohler Engineering, through the use of our sub-consultant Lucas Environmental, will review the site for the presence of resource areas, complete the wetland delineation if necessary and provide a sketch for any wetlands in the vicinity of the subject site.

Wetland Delineation - A Professional Wetland Scientist (PWS) will delineate wetland resource areas within and immediately adjacent to the subject parcel up to 100 feet of the proposed work areas (200 feet for perennial streams). It is assumed the client will obtain landowner permission for environmental surveys occurring off-property prior to the initiation of the survey efforts.

Resource area boundaries identified will be flagged with nylon surveyor’s tape and each flag will be labeled with a unique alpha-numeric code. It is our understanding that location/survey of the flags will be completed by others. Data will be collected in order to characterize each resource area and prepare the MassDEP BVW Field Delineation Data Forms to the extent conditions permit data collection, although forms will not be prepared under this task. Representative photographs of wetlands and adjacent uplands will also be taken. A wetland sketch will also be prepared under this task. This task also includes review and markup of the draft survey to include resource areas and buffer zones.

The following assumptions have been made in preparing the scope and budget for this Task:

- Only the outermost resource area will be delineated, except in the case of identified perennial streams in which the Mean Annual High Water (MAHW) line or Bank of the stream will be delineated in addition to the wetland edge.
- Weather conditions, including frozen ground and snow cover can prevent interpretation of site conditions, and may affect the accuracy of any field-delineated resource area. In some cases, certain municipalities will not accept delineations conducted during the winter months. We recommend that a delineation be performed only with thawed ground and in the absence of snow cover. Should the client wish to proceed during a period of such conditions, Lucas Environmental will need to review all field-delineated resource area boundaries once conditions improve to ensure their accuracy. This will incur additional costs.
- A wetland summary letter/report is not included in this Scope of Services. LE can prepare a separate contract if one is required.

PHASE 998 – Reimbursable Expenses:

This phase includes reimbursable expenses that may be required which will be billed in accordance with the fee schedule below. These expenses include, but are not limited to, postage, Federal Express, mileage, travel expenses, printing, plotting, etc.

In general, our fees for professional services will be predicated on rates as follows:

Principal	\$275.00/hour
Associate	\$275.00/hour
Professional Engineer	\$235.00/hour
Senior Project Manager	\$225.00/hour
Professional Engineering Manager	\$190.00/hour
Professional Architect	\$185.00/hour
Project Engineering Manager	\$175.00/hour
Assistant Project Manager	\$155.00/hour
Project Engineer	\$150.00/hour
Senior Design Engineer	\$135.00/hour
Design Engineer	\$115.00/hour
Staff Engineer	\$ 95.00/hour
Planning Manager	\$160.00/hour
Landscape Architect Director	\$195.00/hour
Sr. Prof. Landscape Architect Manager	\$190.00/hour



Professional Landscape Architect Mgr	\$160.00/hour
Sr. Landscape Architect Project Mgr.	\$160.00/hour
Sr. Professional Landscape Architect	\$140.00/hour
Professional Landscape Architect	\$125.00/hour
Senior Landscape Designer	\$100.00/hour
Landscape Designer	\$ 95.00/hour
Land Surveyor/Associate	\$250.00/hour
Land Surveyor/Sr. Project Mgr.	\$190.00/hour
Land Surveyor/Project Manager	\$140.00/hour
Land Surveyor/Assist. Project Mgr.	\$125.00/hour
Senior Survey Technician	\$120.00/hour
Survey Technician	\$100.00/hour
Assistant Survey Technician	\$ 80.00/hour
Survey Crew Chief	\$135.00/hour
	\$880/half day-
Two Man Field Crew (min 4 hrs)	\$220/hr
Senior Environmental Specialist	\$135.00/hour
Fire Prevention Specialist	\$225.00/hour
Senior Construction Manager	\$145.00/hour
Construction Manager	\$115.00/hour
Construction Engineer/Observer	\$ 95.00/hour
Senior Permit Manager	\$190.00/hour
Permit Manager	\$175.00/hour
Assistant Permit Manager	\$135.00/hour
Senior Permit Expeditor	\$145.00/hour
Permit Expeditor	\$120.00/hour
CAD Manager	\$200.00/hour
Senior CAD Designer	\$110.00/hour
CAD Designer	\$100.00/hour
Senior CAD Operator/Drafter	\$ 90.00/hour
CAD Operator	\$ 85.00/hour
Program Manager	\$135.00/hour
Project Coordinator	\$120.00/hour
Senior Technical Assistant	\$100.00/hour
Technical Assistant	\$ 90.00/hour
Office Administration/Clerical	\$ 85.00/hour
Code and Zoning Consultant	\$275.00/hour
Hearing Attendance & Testimony/Night	\$750.00/night

*Rates are from portal to portal, which includes travel time

** Mileage reimbursement subject to change based upon IRS standard mileage rate.

Miscellaneous Reimbursable Expenses:	
Postage/Federal Express & Printing Supplies	\$Cost
Mileage Reimbursement**	\$0.58/mile
Travel (Hotel, Airfare, Meals)	\$Cost
Printing	\$3.50/sheet
Computer Mylars/Color Plots	\$20.00/sheet
Outside Services or Fees	\$Cost + 15%
Transparencies	\$0.60/each
Photo Copies	\$0.10/each
Color Photo Copies	\$1.50/each
Exhibit Lamination (24" x 36" or larger)	\$50.00/each
Color Aerial Photo Plots (24" x 36" or larger)	\$40.00/each



Below is a summary of workscope and associated lump sum fee for the subject project:

	<u>WORKSCOPE:</u>	<u>FEES:</u>
PHASE 100	Existing Conditions Survey	\$ 10,000.00
PHASE 102	Wetland Delineation and Sketch	\$ 3,500.00
PROJECT TOTAL:		\$ 13,500.00

Items not included in this Proposal are formal site design, revisions, permitting, or activities not specifically identified herein.

Invoices for Professional Services and expenses incurred shall be generated on a monthly basis and are due and payable upon receipt. Additionally, attached to this Proposal are the "Standard Terms and Conditions" of all agreements between our Firm and its clients. The attached "Standard Terms and Conditions" shall form a part of this Proposal and are incorporated herein by reference.

Thank you again for the opportunity to provide our Proposal for Professional Services to be rendered to your office on this project. We are eager to establish a relationship with your organization, and trust you will find our firm's services beneficial to your development objectives.

Sincerely,

BOHLER ENGINEERING MA, LLC

Zachary Richards, P.E.

Mark Wixted, P.E.

ACCEPTED BY:

HARWICH AFFORDABLE HOUSING TRUST

By: _____
Christopher Clark (date)

TERMS AND CONDITIONS

This document is incorporated in and forms a part of the Contract between **BOHLER ENGINEERING MA, LLC** (the "Firm"), and **HARWICH AFFORDABLE HOUSING TRUST** (the "Client"), to which these Terms and Conditions are attached:

- I. PROFESSIONAL RESPONSIBILITY** – The Firm represents that it will perform the services described in the "Contract" attached hereto (the "Professional Services"), and in a manner consistent with that level of care and skill ordinarily exercised by comparable professional firms, under similar circumstances, at or near the same location, at the time the Firm performs the Professional Services. There are no other representations to the Client, either expressed or implied. The Firm does not guarantee approval of or a specific result from the preparation of any plans and/or documents submitted for review. The Firm will complete the Professional Services within a reasonable period of time consistent with applicable professional standards, subject to external parameters and delays and elements not within the Firm's control, however, the Firm is not responsible for the timeliness of the Client obtaining applicable approvals, permits, or the like. The Firm has no duty, obligation or responsibility to inspect, observe, comment, or report on the work of other contractors, vendors or material suppliers, or on conditions, of any nature whatsoever, which exist at, in, on, about, or near the project or property which is the subject of these Terms and Conditions and the Contract. The Firm has no duty, obligation or responsibility for the work and scope of services excluded in the attached Contract which exclusion includes, but is not limited to, responsibility for job site safety. The Firm shall meet the applicable standard of care. The Firm shall perform the Professional Services in accordance with the requirements of applicable codes, regulations, and any current written interpretation of same which have been published, enacted and are in effect as of the date of this Contract. In the event of any changes in such codes, regulations or interpretations which occur at any time after the date of this Contract or during the course of the Project and which result in a substantive change or increase of or to the Professional Services, same is not included in the scope of the Professional Services described in the Contract and if Client desires that the Firm address those changes or interpretations, the Parties shall enter into an amendment or change order to provide for reasonable additional compensation to the Firm for the time and expense of addressing such changes. The following sentence is intended to make clear that the Firm is not responsible for any cost or expense that provides betterment, upgrade, or enhancement of or to the Project. The Client shall bear all costs of any and all changes that result in betterment to the Project, and same shall not be a basis for a claim against the Firm.
- II. CLIENT RESPONSIBILITY** – Client agrees to provide access and right of entry to the subject property for Firm's personnel and any equipment or materials necessary for the Firm to complete the Professional Services. Client further agrees to assist the Firm by providing to the Firm, promptly after the Firm's request, with all information pertaining to the Project which is the subject of the Contract, any Agreement regarding the Project, if one exists and is applicable, and any other documents or materials related to an Agreement or the Project or referenced therein (collectively the "Contract Documents"), and/or these Terms and Conditions, including, but not limited to, existing plans, surveys, recorded deeds, correspondence, reports, specifications, subsurface reports, easement information, and any other related items or information, such that the Firm may perform and complete Professional Services in the most efficient fashion. The Firm is entitled to rely upon the accuracy of all Contract Documents. The Client acknowledges that the Firm has no ongoing maintenance or repair responsibilities related to the Professional Services or the Project, but rather that the Client is fully responsible for all ongoing and future maintenance and repair for any items, elements and/or features described or depicted in any plans, drawings, or specifications related to the Project.
- III. PAYMENT TERMS** – The Firm agrees to perform the Professional Services and the Client agrees to pay the Firm for the Professional Services described in the Contract, without regard to the success or time of completion of the Project, but upon the Firm's completion of the Professional Services and invoicing Client for same. The Firm shall generate Invoices for Professional Services and expenses, monthly. Payment for Invoices is due immediately upon Client's receipt of an Invoice and, in no event, later than thirty (30) days of mailing of an Invoice (the "Due Date"). If Client fails to pay an Invoice on or before the Due Date, the Firm reserves the right, three (3) days after the Firm delivers written notice to Client of said delinquency, to: 1) immediately cease all Professional Services; and 2) to pursue any and all remedies against Client. Client shall fully indemnify and hold the Firm harmless from and against any and all damages of any nature and kind whatsoever, without limitation, that result in whole or in part, from Firm's cessation of its Professional Services as described herein. Additionally, if Client fails to meet its payment obligations to the Firm required hereunder, the Firm may, at its discretion, use or apply a Client retainer for any project to satisfy monies the Client owes to the Firm on this Project or any other project. Should Client authorize the Firm to utilize Client's credit card to pay for invoices, services and/or reimbursable expenses, Client authorizes the Firm to also charge the Client's Credit Card the Credit Card Company's/Vendor's fee, charge or surcharge for the amount charged, as long as same is permitted under applicable law.

In the event the Firm commences a legal action or pursues a claim of any kind or any collection effort against Client for an unpaid Invoice(s) or portion of same (collectively "Claim"), the Client agrees that it shall, in addition to owing the Firm for principal and interest in the amount of one percent (1%) per month commencing on the Due Date, also reimburse and be liable to the Firm for all collection costs, including but not limited to, court costs, reasonable attorneys' fees, staff time, administrative time, in-house Counsel time, and any other related expenses in connection with the Firm's pursuit of a Claim (collectively "Collection Fees"). In the event the Firm possesses a Client retainer, the Firm may, at its option, apply monies paid as a retainer to the Firm's Final Invoice or to any Invoice or delinquent Invoice(s), at any time, and Client specifically acknowledges and agrees to the Firm's right to do so. Once the Firm has been paid for all Professional Services and expenses, the Firm shall refund any remaining retainer to the Client, after Client's request. Billing rates for Professional Services shall be those rates that are in effect when the Firm renders the Professional Services. The Firm reserves the right to modify or increase its billing rates during the term of this Contract.

Client shall provide the Firm with written notice of any disputed charge(s) on or before the Due Date for an Invoice (the "Dispute Notice"). If Client fails to provide the Dispute Notice, Client agrees that it is specifically waiving all rights to dispute said Invoice and any charges contained therein. If Client delivers the Dispute Notice to the Firm on or before the Invoice's Due Date, Client must pay the invoiced amount to Firm, minus the disputed amount, by the Invoice Due Date. Client shall not withhold amounts not disputed. The Dispute Notice must set forth, in specific detail, all bases and reasons for Client disputing said Invoice. Any bases and reasons that Client fails to include in the Dispute Notice are automatically and permanently waived. The Firm and Client shall attempt, in good faith, to promptly resolve disputed Invoices. If any dispute is subsequently resolved or settled in the Firm's favor, then the Client shall pay the disputed amount previously withheld within ten (10) days of such resolution (or settlement) in Firm's favor, including interest at the rate of one percent (1%) per month commencing on the Due Date for said Invoice through the date the Client pays said Invoice and all Collection Fees. If the dispute is subsequently resolved or settled in Client's favor, the Firm shall issue a credit on Client's subsequent Invoice for the disputed amount resolved or settled in Client's favor.

IV. INDEMNIFICATION – Client and the Firm

- A) **THE FIRM TO CLIENT:** The Firm hereby agrees to indemnify and hold the Client and its current and future owners, officers, directors, members, shareholders, parent corporations, subsidiaries, related entities, affiliates, and employees harmless from, against and for third party: losses, injuries, damages, claims, actions, causes of action, demands, liabilities, judgments, expenses, or the like, including reasonable attorney's fees and reasonable litigation costs (collectively "Damages"), which are directly and proximately caused by the Firm's or the Firm's employees, agents or consultant's negligent error(s) and/or omissions(s) in providing the Professional Services in accordance with this Contract; provided, however, that the Firm's obligation and liability hereunder shall not exceed the percentage which the Firm is found liable and responsible for said Damages and further shall not exceed the amount of insurance coverage the Firm maintains. The Firm's liability for reasonable and necessary defense costs incurred by indemnified persons or parties shall be limited to the proportionate extent caused by the negligent acts, errors or omissions herein and recoverable under applicable law as a direct and proximate result of the negligence. It is agreed that Firm's liability for any claim for damages, cost of defense, Firm indemnification obligation, Firm hold harmless obligation, or expenses which the Client or any third party may or does assert against the Firm for or as related to any and all design defects, errors, omissions, breach of contract, negligence and/or professional negligence shall be limited to \$50,000 or two times (2X) the total compensation received by the Firm for the specific Proposal or Work Order in question, whichever is greater. Under no circumstances shall the Firm be liable for extra costs, indirect damages, consequential damages or other consequences due to changed conditions or for costs related to the failure of the contractor or material men to install work in accordance with the plans and specifications. The limitation of liability described above to \$50,000 or two times (2X) the amount of the Firm's fee for a Proposal or Work Order is a specifically bargained-for provision of this Contract and these Terms and Conditions, reflected in the Firm's fees. After Client's request, the Firm will provide confirmation to the Client of the Firm's insurance coverage regarding professional liability and commercial liability coverage. The Firm's liability for reasonable and necessary defense costs incurred by indemnified persons or parties shall be limited to the proportionate extent caused by the negligent acts, errors or omissions herein and recoverable under applicable law as a direct and proximate result of the negligence.
- B) **CLIENT TO THE FIRM:** Client hereby agrees to indemnify and hold the Firm, and its current and future owners, officers, directors, members, shareholders, parent corporations, subsidiaries, related entities, affiliates, agents, servants, employees, consultants, and subconsultants (collectively "The Firm Parties") harmless from, against and for all Damages, deriving out of, for or in any way related to any third party claim or loss of and/or for damage to person(s) (injury or death), and/or to property including, but not limited to, the Project, and/or injuries to or death of or to any and all persons, including injury or death to The Firm Parties or Third Parties, or damage to the Firm's property (the foregoing indemnification language shall collectively be referred to herein as "Indemnification Protection"). The Indemnification Protection includes any injury, death or damage, as more fully described above, which is caused by or results from Client's breach and/or violation of either these Terms and Conditions, the underlying Contract, and/or the Contract Documents, and/or the Client's negligence, action(s) and/or omission(s). Client, as used in this Article IV B, includes the Client's agents, servants, employees, subcontractors, anyone or entity for whom Client is responsible and/or anyone acting by, through, on behalf of, or under the Client.

TERMS AND CONDITIONS

- V. **OWNERSHIP OF DOCUMENTS** – All reports, field data, data, notes, plans, calculations, estimates, drawing documents and other work and items which Firm creates or prepares, either in electronic format or otherwise (collectively “Firm Materials”), are instruments of service and shall remain the Firm’s property. Upon Firm’s receipt of payment in full for all Professional Services and expenses related to the Firm’s creation of the Firm Materials or as required hereunder, the Firm shall convey to the Client a nonexclusive license to use the Firm Materials for the sole purpose of completing the work for the Project identified in the Contract. Client agrees that it shall immediately return to the Firm, upon Firm’s demand, all Firm Materials which the Firm furnishes to the Client or Client’s agents, servants, employees, subcontractors, any person or entity for whom Client is responsible and/or anyone acting by, through or under Client (collectively “The Client Parties”) which are not fully paid for, and that same will not be used for any purpose other than to complete the Project, other phases of the Project for which Firm prepared the Firm Materials, or any other project, whatsoever. During the time period when Firm is performing the Professional Services, the Firm will retain all pertinent records related to the Professional Services and the Firm Materials. Proprietary information and the Firm’s intellectual property including, but not limited to, the Firm’s layering process for Plans (collectively “Proprietary Information”), are not included within the phrase Firm Materials and shall, without exception, remain the Firm’s property and the Firm shall retain all ownership rights and interests to the Proprietary Information under all circumstances, and without limitation.
- The Client agrees not to transfer, send, share, copy, convey or provide the Firm Materials to any individual or entity without the Firm’s prior written consent and without executing the Firm’s Standard Indemnification and Hold Harmless Agreement in the Firm’s favor. The Client further covenants and agrees to waive any and all claims, actions, demands and causes of action, whether legal, equitable or otherwise, of every nature and description, that the Client has, had or may have against the Firm related to or resulting in any way either from the Client’s unauthorized changes to (however small) or reuse of the Firm Materials for any other project, any other phase of the current Project, or any purpose by anyone other than the Firm (collectively “Misuse”).
- The Client agrees, to the fullest extent permitted by law, to indemnify, defend, and hold the Firm and The Firm Parties harmless from any and all claims, damages, losses, injuries, injury to property, injury to person, lawsuits, actions, causes of action, third party action(s), and the like and for all costs and expenses, including but not limited to, court costs, reasonable attorneys’ fees, collection fees, staff time, administrative time, in-house Counsel time, and any other related expenses (collectively “Claims, Damages and Costs”) arising from or in any way related to Client’s Misuse of the Firm Materials, changes made by anyone other than the Firm to the Firm Materials, use of the Firm Materials in spite of the Client’s failure to meet its payment obligations to the Firm hereunder, or from any reuse of the Firm Materials without the Firm’s prior written consent. Client agrees that the Firm shall not be liable for any damage, injury to or death of persons, or damage to property of Client or any other person or entity, from any cause whatsoever, arising from or in any way relating to Client’s Misuse or reuse of the Firm Materials, changes made by anyone other than the Firm to the Firm Materials, or from any reuse of the Firm Materials without the Firm’s prior written consent, which requirement of a writing cannot be waived.
- VI. **REVOCAION OF CERTIFICATION OR STATEMENTS** – The Firm shall have the right to revoke any certification, statements, professionally sealed documents or plans (the “Firm’s Documents”) either if the Firm is made aware of the unauthorized or prohibited use of same by the Client, The Client Parties or any others, or based upon Client’s failure to pay Invoices by the Due Date. The Client assumes the risk of any and all damages, injuries, claims and/or actions that result from the unauthorized use of the Firm’s Documents as described in this Article VI.
- VII. **TERMINATION** – Client may terminate the Contract if the Firm fails to substantially perform under the Contract, after five (5) business days’ written notice to the Firm and an opportunity for the Firm to cure during that time period. The Client may terminate this Contract for convenience after three (3) business days’ written notice to the Firm of said intention. The Firm may terminate the Contract if Client breaches the Contract or these Terms and Conditions. The Firm may terminate the Contract if the Client (a) commits a material breach or material default in the performance or observance of any of its obligations under this Contract, and (b) such breach or default continues for a period of five (5) business days after delivery by the Firm or written notice detailing such breach or default. If the Client’s breach or default relates to its payment obligations under Article III, the Firm shall have the right to terminate all contracts and work with the Client subject to the same notice and cure procedures outlined in this Article VII. The terminating party must provide the other party with three (3) business days’ written notice, which Notice describes, in detail, the reasons, to the extent they exist, for the termination. In the event either party terminates the Contract for any reason, Client shall pay the Firm for all Professional Services the Firm has performed and all expenses the Firm has incurred up through and including the termination date. The effective termination date is the third business day after the date the notice of termination is delivered, as described below in Article XV.
- VIII. **ASSIGNMENT** – This document is binding upon the parties, their successors, representatives, employees, agents, servants and assigns. The Client shall not assign or transfer this document or any interest herein without the Firm’s prior written consent, which consent shall not be unreasonably withheld. The Firm may assign or transfer this document, the attached Contract or any interest herein to any “Affiliate” of the Firm. The Firm may, without the Client’s consent, subcontract any portion of the Professional Services hereunder or under the Contract.
- IX. **NO WAIVER** – The failure of either party to insist, in any one or more instances, on the strict performance of any provisions of the Contract or these Terms and Conditions, or the failure of either party to exercise any right, option or remedy hereby reserved and/or provided under the applicable law, shall **not** be construed as a waiver of any such provision, right, option or remedy, or as a waiver of a subsequent breach. The Firm’s consent or approval of any act by the Client requiring the Firm’s consent or approval shall not be construed to waive or render unnecessary the requirement for the Firm to consent or approve any subsequent, similar act by Client. No provision of this document shall be deemed to have been waived unless such waiver shall be in writing and signed by the party to be charged with waiver.
- X. **NON-SOLICITATION** – Client agrees not to solicit, recruit or hire any employee of the Firm or any of the Firm’s affiliated entities (which includes any entity with “Bohler” in its name) both during the term of this Contract and for at least one (1) year after the termination or expiration of this Contract (regardless of the cause of the termination or expiration).
- XI. **EXERCISE OF REMEDIES** – The parties to this document agree that the Firm’s exercise of any one or more of the remedies set forth in these Terms and Conditions shall, at the Firm’s option, constitute an exercise of the same remedy or remedies under any contract with Client. The parties agree that the Firm can terminate or suspend work under any contract with Client or entity with common ownership with Client, if Client violates this Contract and/or these Terms and Conditions. Further, either party’s exercise of any remedy hereunder or otherwise, shall not preclude that party from exercising other remedies which it is permitted to exercise under the law. The remedial right available to either party regarding the Contract or these Terms and Conditions may be exercised simultaneously, cumulatively, or alternatively as may be necessary or appropriate to enforce such party’s rights.
- XII. **CONSEQUENTIAL DAMAGES AND LIABILITY** – The Firm shall not be liable to the Client for consequential damages under any circumstances including, but not limited to, as a result of the Firm’s Termination of the Contract pursuant to Articles VII and/or X, hereunder. No principal, officer, owner, shareholder or employee of the Firm shall have personal liability for actions taken in the performance of Services under this Contract.
- XIII. **SEVERABILITY AND TITLES** – The provisions of the Contract and these Terms and Conditions shall be severable, and if any provision of either shall be determined by any court of competent jurisdiction to be invalid, such determination shall not affect or invalidate the remainder of these Terms and Conditions or the Contract. The titles given to the Articles in this document are for ease of reference, *only*, and shall not be relied upon or utilized for any other purpose.
- XIV. **THIRD PARTIES** – Nothing contained in this document and/or the Contract shall create a contractual relationship with or cause of action in favor of any third party against the Firm, The Firm Parties, or the Client.
- XV. **NOTICES** – Whenever in this document, or the Contract, written notice or demand is required or permitted, such notice or demand shall be deemed to have been given to, delivered or served upon the party intended to receive the same if such notice is in writing addressed to that party at the address identified in the Contract, and sent or delivered either by (i) Registered or Certified Mail, return receipt requested, postage prepaid; (ii) Federal Express or such other nationally recognized commercial, overnight, receipted delivery service; or (iii) hand delivery. Legal Counsel for any party hereto shall be entitled to give any notice for such party. The date of delivery of any notice provided for herein shall be the date after the date of deposit to the overnight delivery service, or two days after the deposit if sent Certified Mail, return receipt requested, or the date of actual delivery if hand-delivered, unless said date falls on a weekend or legal holiday and then the date of delivery shall be the first non-holiday and non-weekend as outlined above. The person and place to which notice may be given may be changed from time to time by the Client or the Firm, upon written notice to the other, effective five (5) business days after delivery of such notice.
- XVI. **ENTIRE AGREEMENT** – This is a complete agreement. Each party hereto acknowledges its full understanding of, and agreement with this document and, further, the parties agree and acknowledge that there are no verbal representations, promises, understandings or agreements in connection herewith, other than as contained in the Contract, that are not incorporated herein. All previous negotiations and agreements between the parties are merged into this document which, along with the Contract, fully and completely expresses the entire agreement between the parties hereto. The terms of this document may only be modified by a writing, signed by the parties hereto. The parties agree that the Contract and these Terms and Conditions have been mutually drafted and authored by both parties and that the Contract and these Terms and Conditions shall not be construed against any one party hereto.

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XVII. FORCE MAJEURE – The Firm shall not be responsible for its performance, delays, damages and the like hereunder and shall be excused from same for any failure or delay in the Firm's performance of its obligations hereunder arising or caused directly or indirectly by forces or events beyond its control including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, catastrophes, acts of God, interruptions, loss or malfunctions of utilities, communications or computer hardware and/or software or any other causes beyond the Firm's control.

XVIII. VENUE and GOVERNING LAW – Any claims, actions, controversies, disputes, or the like, must be brought in the Federal or State County Court where the Firm is located, as indicated in the Contract. The parties hereto understand, agree and acknowledge the above constitutes a waiver of a right that the parties might otherwise have to bring a claim, action, etc., in any other venue, jurisdiction or location. This document shall be deemed to have been made in and shall be governed by and construed in accordance with the laws of the State where the Firm's principal place of business is located, as indicated in the Contract.